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## Chair

**Mr. Anthony Housefather**

# Standing Committee on Justice and Human Rights

**Wednesday, September 26, 2018**

● (1530)

[*English*]

**The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)):** Good afternoon, everyone. It is a pleasure to call this meeting of the Standing Committee on Justice and Human Rights to order as we continue our study of Bill C-75.

It is a pleasure to be joined by some distinguished witnesses on our panel, so let me introduce them. By teleconference, we have Ms. Debra Parkes, Professor and Chair in Feminist Legal Studies at the University of British Columbia. Welcome, Ms. Parkes.

We have with us today, Emilie Taman, who is an attorney. Welcome, Ms. Taman.

From the All-Party Parliamentary Group for the Prevention of Genocide and other Crimes against Humanity, we have our colleague Mr. Ali Ehsassi, who is the chair. Welcome, Mr. Ehsassi, in a different seat.

With respect to Families for Justice, we have with us Ms. Sheri Arsenault, Mr. George Marrinier, and by video conference, we have Ms. Markita Kaulius, who is the president. Welcome.

With the Student Legal Aid Services Societies, we have Ms. Lisa Cirillo, Ms. Suzanne Johnson, and Mr. Douglas Ferguson. Welcome.

My understanding is that Mr. Ferguson needs to catch a flight and you would like to go first.

Is that correct?

**Mr. Douglas D. Ferguson (Representative, Student Legal Aid Services Societies):** That's correct.

**The Chair:** We're going to let you go first then.

I will turn it over to the Student Legal Aid Services Societies for your brief.

Again, you all have eight minutes per group, but I don't cut you off until 10 minutes. At 10 minutes, I will stop you.

Go ahead.

[*Translation*]

**Mr. Douglas D. Ferguson:** Mr. Chair, we would like to thank the committee for this opportunity to appear today.

[*English*]

As you mentioned, sir, my colleagues are with me: Lisa Cirillo, from Downtown Legal Services at the University of Toronto; and right next to me is Suzanne Johnson, from the community and legal aid services program at Osgoode Hall Law School.

We are here today representing the community of student legal aid service societies. The SLASS clinics, as we are called, are partnerships between Legal Aid Ontario and the Ontario law schools. Programs have a dual mandate to provide free legal services to low-income persons in the community and experiential learning opportunities for law students.

We have filed a written brief with the committee, which you should have received earlier, that outlines our concerns in detail. We know that you have heard from a number of our colleagues on this issue, including our national clinical association called ACCLE, and Ms. Overholt from the Windsor SLASS clinic.

As the committee is aware, Bill C-75 does not directly address our programs, but in purporting to raise the maximum penalty for all summary conviction offences, it triggers the application of section 802.1 of the code. That section prohibits agents from appearing on charges where the possible sentence is greater than six months. Agents, in this sense, include our law students and articling students. If enacted as currently drafted, Bill C-75 will eliminate legal education programs across the country and, more importantly, will cut off access to representation for some of the most vulnerable criminal accused.

Given this government's stated commitment to improving access to justice for vulnerable Canadians, we don't believe that these consequences were intended. We urge the committee to revise the bill now so as to avoid these devastating results and not take a step backwards.

Clinical legal education programs like the SLASS clinics are a small but critical piece of the access to justice puzzle. These programs benefit, first our clients, secondly our students, and thirdly the justice system itself.

**Ms. Lisa Cirillo (Representative, Student Legal Aid Services Societies):** Thank you, Doug.

We'd like to talk first and foremost about the devastating impact the bill would have for the clients we work with at the SLASS clinics.

The clients we serve live in deep and persistent poverty. In addition to whatever presenting legal issue has brought them to us, they are also often dealing with other legal and non-legal problems, such as homelessness, food insecurity, low literacy, disability, unemployment, lack of immigration status and addiction and mental health issues.

In some of our clinics, large numbers of our clients do not speak either official language, and in others, a disproportionate number are indigenous. Many of them are living with the long-term effects of trauma. These are highly vulnerable clients who are not equipped to self-represent.

The clients we work with have no other options for free legal representation. We are legal assistance of last resort for them, literally their last hope. These are clients who need someone to walk with them on their journey through the criminal law system, someone to explain the charges to them, to help them understand their options and the consequences of these options on their immigration status, their employment prospects, their family law case and their housing. They need someone to insist that they are entitled to a fair process and to make sure their voice is heard.

Next we want to talk a little about the impact on our students. As detailed extensively in our written submission, all the SLASS clinics offer criminal law programs. As criminal law case workers, students will interview clients, negotiate with Crown attorneys, attend judicial pretrials, draft submissions, and if required, represent clients at trial. All of this work is done under the close supervision and mentorship of our supervising lawyers.

As Doug noted previously, education is the other half of our core mandate, and we take this responsibility very seriously. We provide extensive skills-based training on criminal law and criminal procedure, as well as supplemental education sessions on oral advocacy, drafting, case management and professional communication, legal ethics and working with vulnerable clients. In terms of the latter topic, our students are taught strategies for working effectively with low-income vulnerable clients, clients who have mental health issues and clients who have experienced domestic violence and who are living with trauma.

These programs are of enormous value to our students, not just in the moment but throughout their professional lives. Many of our criminal law students go on to pursue careers in criminal law as defence counsel, as Crown attorneys, in policy roles and as members of the judiciary. We are quite literally building the future criminal law bar.

**Ms. Suzanne Johnson (Representative, Student Legal Aid Services Societies):** Thank you, Lisa.

Finally, it's our submission that the justice system benefits from our programs. Although the number of clients we represent may seem a drop in the bucket compared to the total number of people in Ontario facing summary conviction charges, our clients, as we've already discussed, are the most vulnerable and the hardest to serve in the system.

Our clients miss court dates because they are homeless and can't keep track of their dates, or because they will lose their jobs if they take time off. Our clients agree to release conditions that they don't understand and can't comply with because no one has taken the time to properly explain the conditions to them. That then sets them up for further charges. Our clients take pleas without appreciating the full impact of the convictions on their other legal matters, jeopardizing their future employability prospects and sometimes even their ability to stay in Canada.

Forcing people who are incapable of meaningfully understanding the process to represent themselves brings the administration of justice into disrepute. It also grinds the mechanism of the criminal law system to a very slow pace.

Moving ahead with the bill as drafted will increase the number of self-represented litigants in court. This flies directly in the face of the stated legislative purpose of Bill C-75. One of the purposes is to reduce the chronic and systemic delays that have plagued the criminal courts. It also contradicts the committee's recommendation in the recent report on legal aid, "Access to Justice Part 2: Legal Aid", which was introduced in October 2017. In that report, recommendation number five talked about recognizing the untapped potential of law students in increasing access to justice.

We acknowledge that section 802.1 of the Criminal Code leaves open the possibility that the provincial and territorial governments can step in and enact orders in council that would preserve the ability of law students to assist on summary conviction matters, but there are no guarantees that the other provinces and territories will do so. Delegating the issue to the provincial governments to fix will likely result in inequitable access to representation across the country.

This bill created this issue, and this bill should be amended to fix it.

In our submission, the easiest way to do so would be to introduce a parallel amendment to section 802.1 that would preserve the ability of law students. As you know, on page eight of our brief, we've drafted a recommendation of how it could be amended. Alternatively, we support Legal Aid Ontario's recommendation that section 802.1 be amended to include a schedule of the most serious summary conviction offences for which agents would not be permitted to appear.

Thank you, members of the committee, for the opportunity to address you on this important issue. Subject to any questions, those are our submissions.

● (1535)

**The Chair:** Thank you so much.

We're now going to go back to the order on the agenda. Our next speaker is Ms. Parkes.

Ms. Parkes, the floor is yours.

**Ms. Debra Parkes (Professor and Chair in Feminist Legal Studies, Peter A. Allard School of Law, University of British Columbia, As an Individual):** Thank you, and thank you for the opportunity to speak with you today.

I'm a professor in the Peter A. Allard School of Law at the University of British Columbia, where I hold the chair in feminist legal studies. My expertise is in criminal and constitutional law, with a focus on sentencing and imprisonment. I've published extensively on these issues, particularly with respect to the imprisonment of women and the growing overrepresentation of indigenous women in Canada's criminal and correctional systems.

Women are the fastest-growing prison population in Canada, and within that, indigenous women's imprisonment is growing at a truly alarming rate. This year, fully 40% of the women in federal prisons are indigenous. This percentage has gone up every year in the last decade. In provinces such as Manitoba, where I lived for 15 years until 2016, the rate of provincial incarceration for women increased by nearly 300% in the preceding decade.

I've been invited to present on the hybridization changes proposed in Bill C-75. These are the more than a hundred offences that are currently indictable with maximum punishments of either 10, five or two years. This bill would make them hybrid so that the Crown could proceed either summarily or by indictment.

Significantly, the bill also increases the maximum sentence for summary conviction offences to two years less a day from six months. The assumption underlying this change, as I understand it, is that it will make the prosecution of crime more efficient and timely, thereby responding to the constitutional issues and unreasonable delay identified by the Supreme Court of Canada in the Jordan and Cody decisions.

In addition to the backlog and delays in processing criminal matters, though, there is a crisis in our provincial and territorial correctional centres. The remand population—those awaiting trial—has grown explosively. Before 2004, the number of sentenced prisoners in provincial and territorial custody was consistently larger than the remand population. However, since that time, the remand population has been growing steadily to the point where prisoners on remand substantially outnumber sentenced prisoners. Again, in Manitoba, where I lived until very recently, 68% of all provincial prisoners are on remand. There are similar numbers in other provinces: 72% in Alberta, 70% in Ontario, etc.

The same 2016-17 statistics show that most adults committed to provincial custody spend less than one month there. Fifty-five per cent of men in provincial jail and 69% of women in provincial and territorial custody spend less than a month. This widespread and short-term use of detention does not promote public safety.

Of particular concern to me in my research is that those in remand or on short sentences in provincial and territorial jails include increasing numbers of women, many of whom are mothers. In addition to the evidence of harm done to children whenever a parent, particularly a mother, is incarcerated, there is considerable research about the profound, negative impact of short-term imprisonment, whether for remand or sentence, particularly to women. A short period in prison for many women usually triggers other significant life events that often spiral the women back into prison—they lose their rental suites, their kids are taken into care and they have a much more difficult time avoiding further criminalization.

Indigenous and racialized accused, those with mental health issues and addiction, and those who are homeless are the people who are filling provincial and territorial jails and remand centres.

Some of the changes that are being contemplated in this bill address bail and administration of justice offences. I'm not speaking to those today, but particularly with respect to bail, I do want to commend to you the submissions of Professor Marie-Eve Sylvestre of the University of Ottawa. Her submissions on the bail system are urgently needed to revise this bill and to make it actually address that issue.

With respect to hybridization, which I've been asked to present on, I'll make three points today. First, despite their good intentions, these changes are not likely to achieve the goal of bringing greater efficiency and fairness to our system. Second, these changes will have unintended negative consequences. Third, what is urgently needed is comprehensive criminal justice reform, and particularly sentencing reform.

With respect to the changes' not achieving their objectives of efficiency and timely trials, the vast majority of cases are already heard in provincial court. An astounding 99.6% are heard in provincial court and only 0.4% in superior court according to 2015-16 StatsCan statistics. Therefore, this change will not have the desired effect, but will have some negative unintended consequences, which I'll turn to now.

With regard to hybridization specifically, hybridizing offences effectively sweeps away important procedural protections. I believe Ms. Taman will be speaking to some of the ways that the Crown and accused elections work, and to the implications for accused persons, so I won't spend time on that.

● (1540)

As for the accompanying raising of the maximum sentence for summary conviction offences to two years, there are important access to justice issues that resolve from this change, and you have just heard about the issues around student representation. My greatest concern with respect to this change is that it will have an inflationary effect on sentences generally in the form of sentence creep. This is a phenomenon documented across many jurisdictions that have increased maximum sentences and even more so when you also have mandatory sentences, as we do in relation to a number of offences.

When there is sentencing room available—increasing the ceiling, and the floor, in some cases—it gets used. The increase in the maximum sentence for summary convictions to two years will also likely have disproportionate effects on women, who represent a small proportion overall of accused persons but are overrepresented among those accused of summary conviction offences, particularly property crimes such as theft under $5,000 and various fraud charges. Women are 37% of theft under charges and 33% of fraud.

There is also a very good reason to be concerned that this change will exacerbate the over-incarceration of indigenous people in prison—jail and remand—rather than alleviate it. Research shows that indigenous people are less likely than other accused to benefit from prosecutorial discretion. Research shows that indigenous people are also more likely to plead guilty than non-indigenous accused for a variety of reasons. There are also potentially drastic implications for foreign nationals and permanent residents, which I don't have time to go into in my time today, with respect to raising the summary conviction cap to two years less a day, from six months, because of the removal provisions in the Immigration and Refugee Protection Act.

In the few minutes I hope I have left I'll speak to my final point, which is that what is urgently needed is comprehensive criminal justice reform and, particularly, sentencing reform.

In recent decades, Parliament has made piecemeal changes to the Criminal Code that have massively increased the number of mandatory minimum sentences and restricted the availability of conditional sentences served in the community. This bill does not speak to that and it needs to—or our reforms need to speak to that.

We've seen a ratcheting up of the average sentence length for many offences, a massive growth in the overrepresentation of indigenous people in prison and jail, overwhelming evidence of our increasing use of imprisonment to address social problems as not delivering on the promise of public safety. Band-aids and piecemeal changes will not cut it. Increasing the maximum sentence for summary conviction offences certainly will not help. It only contributes to the ratcheting up and sentence creep. I urge this committee to recommend against any measures in the bill that would amount to increasing sentences or contribute to remand populations going up.

Beyond that, I urge this committee to recommend sentencing reform on an urgent basis. This includes eliminating mandatory minimum penalties and revisiting now discredited principles of sentencing such as deterrence. The evidence simply doesn't show that sentencing severity actually deters people.

There are also many upstream changes that could be undertaken without actual legislative reform. The federal government could work with provinces to change charging policies and culture, which is what was at issue in many ways in the Supreme Court's opinion in Jordan, to meaningfully invest in diversion programs and indigenous justice initiatives, and to substantially invest in housing, community mental health care and other government services that would decrease the number of people coming into contact with the justice system.

Thank you.

● (1545)

**The Chair:** Thank you very much for staying within the time limit. It's much appreciated.

We will now go to Ms. Taman.

**Ms. Emilie Taman (Lawyer, As an Individual):** Thank you, Mr. Chair.

My name is Emilie Taman. I'm a lawyer with expertise in criminal law. I have worked as legal counsel at the Supreme Court of Canada, as a federal prosecutor at the Public Prosecution Service of Canada for eight years, and for the last two years I have been teaching criminal law and advanced evidence to students at the University of Ottawa's common law section of the faculty of law.

I want to open by saying I cannot agree more with Professor Parkes in particular in her assessment of the need for comprehensive criminal justice reform.

My personal view is that re-establishment of a federal law reform commission is something that should be very seriously considered and pursued by this Parliament. I have a written brief that will make it to you shortly, but I did circulate a chart, which is in both official languages. I likewise have three main concerns when it comes to the reclassification of offences and the so-called hybridization of offences in Bill C-75.

I think it's important, though, that the members of this committee understand the consequences of a summary conviction versus indictable offences and the various discretionary choices conferred on both the Crown and the accused depending on the nature of the offence. I'm going to take most of my time today on that. I would, of course, very much echo the concerns in relation to access to justice by virtue of the raising of the ceiling for summary conviction offences by default to two years. Also I am very skeptical about whether this hybridization will have the desired impact of enhancing efficiency or expediency in the criminal justice process.

I would just put on my law teacher hat here and ask you to turn your attention briefly to what's noted as appendix A, which is an appendix to my brief, which you don't yet have. It attempts in a very clumsy way, given my lack of expertise with any kind of graphic design, to explain a little bit about the consequences of hybridization.

Essentially in the Criminal Code you have, generally speaking, three kinds of offences. You have what we would refer to as straight summary conviction offences. Those are statutory offences that can proceed only by way of summary conviction. On the other hand, you have what we would call straight indictable offences. Those would be statutory indictable offences. Then there are a large number of offences that we refer to as hybrid offences. Those are offences that can proceed either by way of summary conviction or indictably. The question as to which of the two ways hybrid offences will proceed is really all about the exercise of prosecutorial discretion. Early in the proceedings when it comes to hybrid offences, the Crown is asked to elect whether the matter will proceed summarily or by indictment. You see that with the green arrows in the chart, which are my attempt to show you the Crown's elective options.

Summary conviction offences all proceed in provincial court. If it's a straight summary offence, it goes to provincial court. If it's a hybrid offence in relation to which the Crown has elected to proceed summarily, it likewise can go only into the provincial court and the accused has no election in that regard.

On the other hand, in straight indictable offences or hybrid offences in relation to which the Crown has elected to proceed by indictment, the accused as a general rule can make one of three elections. The accused may elect to have his or her trial proceed in provincial court with a judge alone, because there are no juries in provincial court, or the accused can elect to have his or her trial in superior court presided over by a judge alone. The third option is that the trial can proceed in superior court with a judge and jury.

There are two statutory exceptions to the accused election set out in sections 553 and 469 of the code. Those are very limited exceptions. Certain enumerated offences do fall within the absolute jurisdiction of one court or the other. What I want to highlight here is the impact that hybridizing a large number—136 straight indictable offences—will have in particular when it comes to the accused's right to elect to be tried by jury.

● (1550)

As it stands with these 136 offences, because they are straight indictable, the choice lies wholly with the accused. I really want to underscore that it is common for accused to elect to be tried in provincial court. I wasn't, unfortunately, able to find the exact numbers on that, but I just want to make sure this committee understands that it is not presently the case that all indictable offences proceed in superior court. In fact, a significant number proceed by trial in provincial court.

By taking these 136 offences and making them hybrid, the Crown will now have a very important role to play in relation to the question of whether an accused can exercise his right to a trial by jury. If the Crown should elect at the outset to proceed summarily, the accused loses the ability to elect to have a trial by jury. This is something—again I don't know if this is an intended consequence or if it's an unintended consequence—that I do think is significant. I want to make sure that the committee fully understands that.

I am very concerned any time we take discretion away from a judge and put it in the hands of the Crown. Likewise, here we're taking a choice from the accused and at the outset conferring that decision on the Crown as to whether the accused will even be legally able to elect to be tried by a jury. The exercise of prosecutorial discretion is almost completely lacking in transparency and is not subject to review except at the very high bar of abuse of process.

I want to be clear in saying that this does not give rise to a technical breach of paragraph 11(f) of the Charter of Rights and Freedoms, which is the constitutionally protected right to trial by jury, because paragraph 11(f) is only triggered in the context of offences punishable by five years or more. In hybridizing these offences—offences that currently, as Professor Parkes noted, have statutory maximums of two, five, or 10 years—when the Crown elects to proceed summarily, by virtue of the new default maximum for summary conviction offences being raised to two years, the constitutional right will not, technically, be engaged. But it is the case that, for someone charged before this bill and someone charged after this bill with the same offence in the same circumstances, one of those accused will have the right to elect to be tried by judge and jury, and the other, in the case where the Crown elects to proceed summarily, will no longer be able to exercise that, at least, statutory right. It is an important consequence I want to highlight.

One other thing I want to briefly note about the impact of raising the statutory ceiling, the maximum penalty for summary conviction offences from six months to two years, is that it's important to understand that, as things stand, it is not the case that all summary conviction offences are punishable by a maximum of six months. That is the statutory default, but there are a number of offences, including assault causing bodily harm and sexual assault, for which, even where the Crown proceeds summarily, there is a statutory maximum of 18 months.

The effect of that, and I just want to build on what my colleagues from the student legal aid clinics were noting, is that currently, students and other agents—and it should be noted that a significant number of agents are neither law students nor articling students but paralegals and others—are currently authorized to defend persons charged with offences carrying a maximum punishment of up to six months, that is, not all summary conviction offences. That's why I would be concerned about attempting to address this, I think, unintended consequence of the bill by simply saying that agents can do all summary conviction offences.

The effect of proceeding that way would significantly expand the offences that can be defended by students and agents, and I think there are concerns there. As far as remedies for that go, I would certainly be more on the side of Legal Aid Ontario's submission to have a schedule of offences that would be excluded from agent representation.

I've made some other points in my brief, which will be forwarded to you, but I'll leave it there for now. Thank you.

● (1555)

**The Chair:** Thank you so much.

Next we have Mr. Ehsassi.

**Mr. Ali Ehsassi (Chair, All-Party Parliamentary Group for the Prevention of Genocide and other Crimes against Humanity):** Thank you, Mr. Chair.

In having been on the other side of this table for most of this study, it's obviously an honour for me to now speak to you from the opposing side. I should say it's an intimidating exercise, given the reality that you are all known, individually, to be the smartest members of Parliament.

**The Chair:** We're going to put that on the record and we absolutely agree with that contention.

**Mr. Ali Ehsassi:** You can take judicial notice.

**The Chair:** Exactly.

**Mr. Ali Ehsassi:** I am here this afternoon in my capacity as chair of the All-Party Parliamentary Group for the Prevention of Genocide and other Crimes against Humanity, hereafter referred to as GPG. I am here to discuss Bill C-75, in particular, the hybridization aspects of the bill impacting subsection 318(1) of the Criminal Code, incitement to genocide.

Before I continue I should stress that while I am here in my capacity as chair of the GPG, my views do not necessarily reflect the views of the GPG as a whole, nor the views of its individual members.

I also believe that a brief summary of the GPG's history, operations and mandate will provide some context to our approach to Bill C-75 and subsection 318(1) of the Criminal Code.

The GPG was founded in 2006 by Senator Roméo Dallaire to provide members of Parliament and senators with a non-partisan forum for co-operation on issues of pressing humanitarian concern. Currently comprised of 36 members from across party lines, the GPG works to inform parliamentarians about ongoing conflicts, and through close collaboration with partners, experts and stakeholders, crafts strategies to help prevent genocide and crimes against humanity.

Since its inception the GPG has conducted studies and meetings on humanitarian crises in Burundi, Darfur, the DRC, Myanmar and Yemen, and it has established close working relationships with Amnesty International, the Montreal Institute for Genocide and Human Rights Studies, the Stanley Foundation, the Roméo Dallaire Child Soldiers Initiative and the Digital Mass Atrocity Prevention Lab, to name a few.

The GPG, in other words, has largely been a forward-looking and globally oriented institution. The fields of human security, human rights and atrocity prevention have always, rightly or wrongly, been largely oriented toward studies of foreign policy and related fields such as security studies, international law, international trade and international development. It is somewhat unusual, therefore, that our group has been asked to comment on what is essentially domestic legislation and jurisprudence.

However, the changes in proposed section 318 of Bill C-75 clearly relate to domestic genocide prevention and incitement to hatred laws. Although such relatively minor modifications constitute only a small part of the sweeping changes included in Bill C-75, we have a duty to examine the potential impact and side effects. Moreover, given the leadership role Canada has always observed in matters of human rights and genocide prevention, it is imperative that our laws relating to genocide and atrocity prevention remain second to none.

As you are aware, Bill C-75 seeks to modify the wording of subsection 318(1). The existing wording of the section reads:

> Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

The proposed revised wording would read:

> Every person who advocates or promotes genocide is guilty of
>
> (a) an indictable offence and liable to imprisonment for a term of not more than five years; or
>
> (b) an offence punishable on summary conviction.

These changes are part of the hybridization efforts included in Bill C-75, which I broadly support, and which seeks to improve access to justice by giving the Crown the necessary discretion to elect the most efficient mode of prosecution evaluated on a case-by-case basis. Hybridization will reduce court time consumed by less serious offences while freeing up limited resources for more serious offences. Of course there are few offences more serious than advocating genocide, which is why these amendments must be taken very seriously.

The first of these changes, which substitutes "every one" with "every person" appears multiple times in Bill C-75 and merely appears to be part of a broader effort to modernize the language in the Criminal Code. It is difficult to see how this change would have any impact on Canada's genocide prevention regime.

● (1600)

The second and more substantive change seeks to hybridize incitement to genocide as punishable via summary conviction. This change, which represents one of approximately 170 clauses in the Criminal Code being hybridized or reclassified, will allow prosecutors to pursue summary convictions for offences that would have a shorter sentence.

The proposal hybridizes all straight indictable offences punishable by a maximum penalty of 10 years or less, which is why clause 318 was captured. It also increases the default maximum penalty to two years less a day of imprisonment for all summary offences and extends the limitation period for all summary conviction offences to 12 months from the current six months.

It is important to note that subsection 318(1) has rarely been invoked in Canadian courts. The practical impact of this modification may ultimately prove negligible. However, given the extremely serious nature of the issue at hand, as well as Canada's moral obligation to serve as a leader in the field of genocide prevention, this committee should support an amendment to Bill C-75 ensuring that incitement to genocide provisions are not included within the otherwise prudent attempts at hybridization and reclassification.

Moreover, there is precedent within this bill for not hybridizing specific elements of the Criminal Code. Offences that would be repealed in Bill C-39 and Bill C-51 are excluded from the hybridization process. Furthermore, nine other indictable offences that are currently punishable under mandatory minimum penalties would not be hybridized either.

To be more specific, I'm referring here to subsection 92(3), which relates to possession of firearms, knowing possession is unauthorized; section 99, which relates to weapons trafficking; section 100, which relates to possession for purposes of weapons trafficking; section 103, importing and exporting firearms; section 202, relating to bookmaking; section 203, placing bets on behalf of others; section 279.03, which relates to withholding documents; section 286, which relates to purchasing sexual services; and lastly section 467, which relates to the recruitment of criminal organizations.

Therefore, given both the practical importance and symbolic value of subsection 318(1), we feel that this section should be included amongst the carve-outs referenced above. The fact that section 318 has almost never been invoked in Canadian courts is a testament to our tremendous good fortune and our dedication to diversity, human rights and human security. This good fortune has allowed Canada to serve as a global beacon for genocide prevention efforts. While I have every faith that Canada will continue in this noble tradition regardless of the outcome of Bill C-75, amending the legislation before us to ensure that genocide advocacy remains an indictable offence would once again send a clear message that this heinous act is incompatible with Canadian values.

I thank you for your consideration of this matter. I look forward to any questions you may have.

● (1605)

**The Chair:** Thank you very much, Mr. Ehsassi.

Now we will turn to Families for Justice. Ms. Arsenault, I understand that you're going to start and that you're going to take approximately half the time and Ms. Kaulius will take the rest.

Go ahead, Ms. Arsenault.

**Ms. Sheri Arsenault (Director, Alberta, Families For Justice):** First off, I will mention my father George Marrinier. He submitted a brief statement to the committee earlier.

Thanks for the invite to speak today. Everybody here knows my personal tragedy, the horrific death of my son Brad and his two friends. I'm not a legal expert, and I know there are some at this table who are, but where my expertise lies is that I'm a victim. My tragedy alone involved over 30 court dates, and I've spent countless hours in courtrooms supporting victims all over Alberta.

Bill C-75 is an enormous bill, and it's intended to address the Jordan decision to reduce court delays.

I'm speaking specifically today to the reclassification of offences, the hybridization of 136 serious crimes, crimes that are identified as indictable offences such as terrorism, assault with a weapon, arson, advocating genocide, human trafficking, abduction of children, and that's just to name a very few.

The sentences for indictable offences range from two to 10 years, but when changed to summary convictions, sentences would be reduced to a maximum of two years with the real possibility of a mere fine. It's a simple fact that by hybridizing indictable offences sentences would be much more lenient.

With all due respect to our prosecutors, bad decisions on these offences will set precedents and case law. Once precedent is set for lower sentences regarding serious crimes, our justice system goes officially backwards. This would weaken public confidence in our justice system and it would also be a colossal change that would take decades to correct.

Bill C-75 also proposes to reduce impaired driving causing bodily harm, refusing to blow, and blood alcohol over the legal limit causing bodily harm from indictable offences to summary conviction.

Why would this government, which just recently passed Bill C-46, which increased penalties for dangerous driving causing bodily harm from 10 to 14 years, now be weakening penalties for impaired driving causing bodily harm?

This government bill is telling Canadians loud and clear that impaired driving is not considered serious and, in fact, it's not even considered dangerous. As a victim and a voice for thousands of victimized families, I find that our government, instead of improving the Criminal Code by holding offenders accountable for serious offences, would be reducing and watering down penalties.

To reduce these offences to summary convictions sends an unthinkable message to victims and the general public, and it holds absolutely no accountability or responsibility to the offenders. When it comes to impaired driving, this bill is taking Canada's justice system 10 steps backwards.

We're all aware there's a high percentage of serious criminal cases before our courts, and that is troubling to everyone, but it's not because of inappropriate laws. It's more likely because of other government priorities. If more resources are allocated to our justice system, the prosecution of offenders could be much more timely.

It's beyond my comprehension as to how transferring indictable offences, which currently have a 30-month timeline, to summary offences, which only have an 18-month timeline, would help address the Jordan decision. Our already congested provincial courts' overworked prosecutors would be burdened with a greater number of cases and required to act in a much shorter time frame. As a result, many more lenient plea deals will occur and even more offenders will walk free.

The impact this bill would have on our overall justice system is unbelievable when applied to all 136 indictable offences. All crimes should be treated the same throughout the population regardless of race, religion, ethnic origin, age, gender, economic or social status. Judges, not prosecutors, are best to judge sentencing options, making adjustments for mitigating and aggregating factors, Gladue reports, etc.

Two of the most important sentencing principles are being ignored: deterrents, general and specific; and rehabilitation. The opportunity for rehabilitation of criminals, especially for substance abuse, will almost be non-existent. There would simply be no time with summary convictions.

● (1610)

To me, that would add to the revolving door and create even more victims, and it would crush existing victims. Clearing up the backlog in the criminal justice system should never be done at the expense of victims and public safety. Criminals should never take precedence over victims. It's the victims and law-abiding citizens who will suffer, certainly not the offenders.

**The Chair:** Ms. Arsenault, can I just point out that you're over five minutes, and I want to give Ms. Kaulius her five minutes. Can I ask you to wrap up so I can go to Ms. Kaulius?

**Ms. Sheri Arsenault:** Okay.

Serious crimes should remain indictable offences and not be reduced to summary convictions at the prosecutor's discretion. There should be no hybridizations of serious crimes.

Thank you.

**The Chair:** Thank you so much.

Ms. Kaulius.

**Ms. Markita Kaulius (President, Families For Justice):** Good afternoon. Thank you for inviting me to be here today.

The federal government is proposing changes to reduce penalties for many serious crimes in Canada. The proposed changes are part of Bill C-75, which contains more than 300 pages of sweeping changes to the Criminal Code of Canada. Some of the proposed changes are to offences that include acts related to terrorism, assaults, impaired driving, arson, human trafficking and much more. These lower sentences send the wrong message to criminals, victims, law-abiding Canadians and society.

For summary convictions that fall under the jurisdiction of the federal government, section 787 of the Criminal Code of Canada specifies that unless another punishment is provided for by law, the maximum penalty for a summary conviction is a sentence of six months of imprisonment, a fine of $5,000 or both.

We need to have effective deterrents in place that will actually deter these crimes from occurring. If and when they do occur, tough punishments must be in place so that individuals who break the law will be held accountable.

The justice minister says that Bill C-75 will improve the efficiency of the criminal justice system and reduce court delays, strengthen the response to domestic violence, streamline bail hearings and free up court resources by reclassifying serious offences.

Sadly, according to the legal community, this bill will not achieve any of those objectives. Under Bill C-75, the Liberal government has provided the option to proceed with a large number of violent offences by way of a summary conviction rather than indictable offences. This means that the violent criminals may receive no more than six months in jail, or a fine, after committing a serious crime.

Many who commit crimes already get a slap on the wrist for things like obstructing justice, assault with a weapon, abduction, participating in organized crime, impaired driving, and drug trafficking. These are all serious offences. Allowing these criminals back onto the streets with little to no deterrence makes even less sense. Canadians expect this government and our criminal justice system to be there to ensure that public safety is a priority and that criminals receive punishment for the crimes they commit. Public safety and national security should be top priorities for this government. While the Liberal government has said that public safety is a priority, this bill fails the test to keep Canadians safe.

Police officers will likely see themselves arresting the same people over and over again as criminals get lighter sentences in provincial courts or fines for summary convictions. We already have a problem with repeat offenders committing crimes over and over again in communities across Canada, and therefore the backlog will move from the courts to the policing community and back to the courts.

Bill C-75 is a terrible bill for victims and for public safety. We have criminals accused of horrendous crimes, including murder, incest and drug trafficking, who have had their charges dropped because of delays in the courtroom. These charges should never be dropped when a crime has been committed. The accused should still stand trial and not be released or have their charges dropped because it took too long to get to trial. This proves again that in Canada criminals have more rights than the victims.

The federal government needs to make changes to the laws, but please don't sacrifice appropriate sentencing just to speed up the court process by giving lower or no sentences in court cases.

The biggest red flag in this legalization is the hybridization of many indictable-only offences done by adding summary convictions as a sentencing option. Some serious crimes deserve serious penalties, and many of the crimes are classified as "indictment only" for a reason. They should not be punishable under summary conviction with a mere possible fine. That option should not be included in Bill C-75.

With the Liberal government's legalization of marijuana, Canadians are very concerned about impaired driving and now fear an increase in future drug-related impaired driving injuries and deaths. In Bill C-75, there are four drunk-driving related offences, which all become a summary offence instead of an indictable offence. This includes impaired driving causing bodily harm with a blood alcohol level over the legal limit, failure or refusal to provide a sample with causing bodily harm, and impaired driving causing bodily harm by negligence.

● (1615)

For the past seven years, Families For Justice has been asking for tougher impaired driving laws. In that time period, over 7,000 more innocent Canadians have been killed by impaired drivers. We submitted a petition with over 120,000 names signed by Canadians asking the federal government to implement tougher sentencing laws. Now this government wants to do the exact opposite and make the sentencing a summary offence.

We ask this government to make appropriate changes in the laws in an effort to enhance the criminal justice system while preserving the protection of Canadians. I emphasize "to enhance", not to just make the system more efficient by speeding up the court process by sending cases to the provincial court level instead of the superior courts.

Although some of the amendments are welcome, others signal a significant shift in our criminal justice system. Change can be good; however, even the smallest change must be implemented towards a goal we all share: maintaining the fine balance between protection of the public and protection of the individual within the system.

We still need to place the rights of innocent victims ahead of offenders committing crimes. Members of the justice and human rights committee, we must not sacrifice one for the other.

Thank you.

**The Chair:** Thank you very much.

Now we're going to go to questions, and we're going to start with Mr. Clement.

**Hon. Tony Clement (Parry Sound—Muskoka, CPC):** Thank you, Chair.

Thank you to all the deponents here—not opponents, but deponents. I just want to make that clear. It's great to have you here to help us build a better bill, hopefully.

I want to say in particular to Ms. Arsenault and Markita that I appreciate your comments about the hybridization. We have been hearing these concerns about the impact it will have on the ability to have just sentences.

I'll have a couple of questions for Ms. Parkes a little bit later, but I will start with Ms. Arsenault. I want to get a sense of your advocacy and whether you feel you've been heard appropriately and adequately by the current government. How do you feel about that?

● (1620)

**Mrs. Sheri Arsenault:** That's a simple no. I've been trying for four years to meet with the current justice minister. I sent letters to every MP, Liberal MP, not once but twice, every single one, and I got probably less than a half dozen responses back. I've had a hard time to even get anyone to talk directly to me about the problems I see out there.

**Hon. Tony Clement:** Then you don't feel that this bill meets any of the concerns that you have raised over the past number of years.

**Mrs. Sheri Arsenault:** No, this bill does the exact opposite. It's telling me, and the general public, that especially impaired driving but also crime in general, serious crimes in general, are not serious. It's heartbreaking that there's not even, what seems to me, the right amount of time for rehabilitation.

**Hon. Tony Clement:** Thank you, Ms. Arsenault.

Ms. Kaulius, I wanted to give you a chance as well to talk about your interaction with the current government—the pluses, the minuses, what your experience has been.

**Ms. Markita Kaulius:** I've been fighting for changes in the laws now for seven years. Members of the Conservative Party were very open to hearing what we said, but the Liberals—I'm sorry, I'm being honest here—the Liberal government has not been very welcoming. We've asked for meetings. We've been turned down. I've spoken to MPs when I've been back in Ottawa. I've been back to Ottawa five times now and I've met with MPs and asked them questions, and asked if they could get back to me, but I've never heard back from anyone.

**Hon. Tony Clement:** Thank you, both of you. I encourage you to keep advocating and keep fighting for what you believe in because I think it's very important that Canadians hear your voices. Thank you for all that you do.

I want to ask a question of Debra Parkes, if I could.

You said something, and Ms. Taman I think echoed it a little bit. Your point of view is that we need comprehensive sentencing reform, but what we're getting through hybridization actually won't achieve the goals and may make matters worse. I don't want to put words in your mouth, but is that in a nutshell what you're saying?

**Ms. Debra Parkes:** Yes.

I mean, it's this bill in the context of the last 15 years of piecemeal changes to criminal legislation. Taking into account all of the harms that are done through crime, through the criminal justice system, to victims, to everyone.... The thing I would say about that is that the reality, when you look at who is in prisons, is that the line between victim and offender is actually not a solid one, particularly when you look at women. Those women have experienced massive victimization and as well have then been perpetrators.

We need to, in our sentencing reform, look at all of that and at what actually works and what doesn't. We have a lot of evidence now about what doesn't work. Longer sentences, sentencing severity for deterrence, simply don't work.

**Hon. Tony Clement:** I'm going to ask you to put yourself in the shoes of an MP just for a second. Pretend you're on this committee and you're given this 306-page bill, and comprehensive sentencing reform seems to be a mirage in the present context. What would you do? Is this bill salvageable in any capacity? What would you do with this bill?

**Ms. Debra Parkes:** Others can speak and have spoken to the various parts of it, around the bail system and that sort of thing, and I think there are some good efforts there to address the remand situation. I think there are some good elements there. The view I take is different from that of other witnesses, but I think the evidence shows that any of the measures that are going to increase sentences, including increasing that ceiling for summary conviction offences, through hybridization....

We ought not to be increasing any penalties, because we've had this ratcheting up of sentences through various kinds of piecemeal legislation and we don't have the return that we want in terms of public safety. The cost is so high, in both human and fiscal terms, for everyone involved. We need a much more comprehensive sentencing reform that would involve all of the stakeholders and would involve looking at the evidence, starting with our sentencing principles, and see what's working and what's not. That, I think, is what needs to happen, rather than anything that would actually get us into a situation of increasing sentences.

● (1625)

**Hon. Tony Clement:** Thank you.

Apparently I'm out of time, but I thank you for your comprehensive answer.

**The Chair:** Thank you very much, Mr. Clement.

We will go to Mr. McKinnon.

**Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.):** Thank you, Chair.

Let's talk about hybridization. I'd like to ask Ms. Taman a question.

We have a lot of hybrid offences now. What is the process that a prosecutor might go through in order to decide whether to proceed by indictment or summarily?

**Ms. Emilie Taman:** I've had to make that decision myself on a number of occasions.

There are several different factors. Often one factor that can operate is in relation to limitation periods. If a longer period of time has elapsed since the date of the offence, you may have missed a limitation period that would have allowed you to proceed in a provincial court by summary conviction, in which case you can proceed by indictment.

I think usually, though, the main operating consideration is the seriousness of the offence. We have a lot of offences in our code that are, by design, broadly defined, in the sense that they can capture a really wide range of conduct. An assault would be a really good example of that. An assault can be relatively trivial on the spectrum or it can be a very serious offence. In considering whether to proceed summarily or by indictment, one of the things you'd be looking at is the seriousness of the offence. Related to that would be the punishment that you intend to seek because of the statutory maximums being lower for summary conviction offences than for indictable offences.

I want to highlight as well that a relevant piece in the hybridization is that, for these indictable offences that are, let's say, punishable by up to 10 years, there's nothing that stops a judge from sentencing someone to six or 12 months. It's not necessarily the case that sentences will be reduced by hybridizing and proceeding summarily, because there are many examples of offenders who are sentenced to far below the statutory maximum, even for straight indictable offences.

**Mr. Ron McKinnon:** For the purpose of achieving justice, is there any advantage to proceeding summarily instead of by indictment, apart from the limitation periods that you mentioned?

**Ms. Emilie Taman:** Is there an advantage for the Crown...?

**Mr. Ron McKinnon:** Are there cases in which justice would be better served by proceeding summarily rather than by indictment?

**Ms. Emilie Taman:** I can't really think of a reason why the quality of the justice would be impacted by the decision to proceed either summarily or by indictment.

When the Crown proceeds by indictment there are implications for that in terms of the accused elections. If the Crown intends to seek a lesser sentence and doesn't see a value in the more cumbersome procedures of a preliminary inquiry—should they be retained after this bill—or a jury trial, that could be a consideration that the Crown makes as well.

I'm not sure that there's a benefit other than perhaps the fact that matters in provincial court do tend to take a little bit less time from charge to completion.

**Mr. Ron McKinnon:** You mentioned that an accused loses the right to elect trial by jury if the Crown elects to proceed summarily. On the other hand, the jeopardy the accused faces is far less. Jeopardy would be no more than two years less a day. Is losing the right to a jury for an offence that is two years less a day really a serious concern?

**Ms. Emilie Taman:** From the perspective of accused people, it is serious. That's why I tried to be clear in highlighting that it would not necessarily violate the charter for the reasons you explained. The charter sets the bar at five years to reflect that level of jeopardy. The reality is that there are people who are charged today with offences that are indictable, carrying statutory maximums of 10 years who have jury trials and are ultimately sentenced to less than five years.

One of the concerns I have is this kind of subtle chipping away. If we take away the preliminary inquiry and if we take away the statutory right to a jury trial, I'm very concerned about trying to give effect to the 11(b) rights of the accused in exchange for a bunch of other procedural protections. While it may be the case that no single measure violates the charter in its own right, I do have concerns about the constitutionality when taken comprehensively with abolishing the preliminary inquiry for all of these offences, along with the way we select juries and other things in their totality.

● (1630)

**Mr. Ron McKinnon:** I also want to talk about deterrence.

Many people have spoken to the deterrent effect of higher maximums and the concern that the availability of a lower sentence, if proceeding summarily, would diminish the deterrence effect.

In the case of the existing hybrid offences, does the fact that they're hybrid affect the deterrence at all?

**Ms. Emilie Taman:** With the greatest of respect, the evidence really flies in the face of the notion that the length of a sentence has any deterrent effect at all.

Professor Parkes could probably speak to that with a little more data behind her. I think that's what Professor Parkes was getting at in the need for comprehensive sentence reform. A lot of the piecemeal measures that we have seen over the last 15 years have been premised on this faulty premise that lengthening the availability of a sentence has an impact.

What has a bigger impact is the likelihood of getting caught, for example. Unfortunately there is a real fallacy in that proposition.

**Mr. Ron McKinnon:** Thank you. I think that's my time.

**The Chair:** It is. Thank you very much.

Mr. Rankin.

**Mr. Murray Rankin (Victoria, NDP):** Thanks to all of the witnesses—so many witnesses, so little time.

I want to first, if I may, just do a shout-out to Professor Parkes, whom I won't have time to ask a question of. Congratulations on your editorial in The Globe and Mail yesterday on the impact of mandatory minimum sentences, particularly on indigenous people. It was great, and thank you for introducing the term "sentence creep" to our vocabulary.

Ms. Cirillo, I just want to say, as a proud alumnus of the Downtown Legal Services, I know first-hand the important work that you people do. Thank you for doing it and for shining a light on what, I agree with all of you, is an unintended consequence of Bill C-75, that's to say, essentially shutting you out of the provincial court where you do such great work.

In a moment, I'll come back to you with solutions I'd like to get your take on, but I want to remind people of the quote I took from your excellent submission:

> The unintended consequence of Bill C-75 would further exacerbate the access to justice issues facing Ontario criminal courts. SLASS clinics have worked for decades representing individuals charged with criminal summary offences, providing effective and efficient representation for those who would otherwise find themselves unrepresented in the criminal justice system. This bill will put an abrupt end to this legacy.

I couldn't have put it better than that.

Ms. Taman, if I could, I want to ask you a few questions. Thank you for the chart you gave us. I wish we had it when we started this little odyssey a few weeks ago.

In respect of the hybridization issue, you talked about the 136 indictable offences being hybridized, and you made an argument that I don't think had ever been made to our committee before. You said that part of the bill is the potential to significantly limit the accused's existing statutory right to elect to be tried by judge and jury and the effective shifting of this choice from the accused to the Crown. I don't think we've heard that before.

Well, if I may, so what? I understand the accused would lose that choice, but isn't it arguably in his or her best interest to go to a trial with a lower maximum penalty? If the person were to be tried by a jury in a higher court, they would likely be gambling on a harsher penalty. Is that a fair comment?

**Ms. Emilie Taman:** The decision that an accused has to make when deciding whether or not to avail him- or herself of a jury trial is a complex one. There are a number of factors that have to be considered, especially in terms of the nature of the factual issues at play, because the jury is a trier of fact and not of law. As I said previously, just because it's a jury trial or just because it proceeds indictably and has a higher maximum doesn't mean the accused is in jeopardy of getting that higher maximum, depending on the circumstances of the offence.

It is a consideration that an accused would have to make, but the difficulty is that in this case it will now be the Crown that's making that decision in the first instance. So, yes, when the Crown elects to proceed summarily, the accused is exposed to a lower maximum penalty, that is true, but I think there are likely a number of accused who would prefer to have the jury trial and be exposed to the higher sentence, depending on the circumstances and the issues that are at play in their case.

● (1635)

**Mr. Murray Rankin:** Thank you.

You also talked about the fact that this election will now often go to the Crown and you talked about the virtually unreviewable prosecutorial discretion in our system, subject to this very high bar, if I heard you properly, of abuse of process. That lack of accountability concerns you greatly, I gather.

**Ms. Emilie Taman:** It does, and it's one of the things that also concerns me about mandatory minimum punishments. It's important when an accused is exposed to a loss of liberty at the hands of the state that there be a transparent process. The reality is that prosecutors make a number of discretionary decisions that can enhance or detract from the level of jeopardy that an accused faces, yet in those decisions, by and large nobody knows why they were made or the reasons for them, and they're effectively immune from review.

**Mr. Murray Rankin:** This goes to the solution part in respect of keeping people like your student legal aid services out of the courts. It's solution time, and one solution that was proposed was, I think, under section 802.1 of the Criminal Code, that we talk to the lieutenant governors of the provinces. Indeed, in June I asked the Minister of Justice when she was here what she was going to do about this unintended consequence. I think you mentioned this in your brief as well. Her response was that she was talking to the provinces and territories about their programs under section 802.1, where she might be able to do a deal with the provinces.

I think you suggest, Ms. Taman, that maybe the better solution would be to not do it piecemeal but to do it all at once, but not for every single one of these new offences and to have a schedule.

I would like your reaction to that. You probably don't want to cover every single brand new summary conviction offence that's being created, or do you? If not, how would you react to the solution proposed by Ms. Taman?

**Ms. Lisa Cirillo:** Maybe I'll start, and then Doug and Suzanne can add.

I guess I'd say a few things. It's important to understand that we're speaking from the perspective of the student legal aid clinics in Ontario, a province that has quite a robust provincial legal aid system. In fact, they are our primary funders. The way in which we map out where clients go for representation is that if it looks like imprisonment is a likely possibility, that client will likely be eligible for a certificate from legal aid.

In terms of our programs, we're representing clients who would not otherwise be eligible for legal assistance. I'd start by saying that. Then I guess I'd say that the reason we chose to put the language that you see in our brief as our first suggestion is that we're not proposing that any agent should be allowed to do this work if the changes go through. We're proposing that articling students or students in programs like ours, where they are part of a robust and highly supervised environment, could and should provide assistance to clients who have nowhere else to turn. What's the alternative? We are only representing people who don't have any other option for legal assistance.

I'm delighted to hear that you're a DLS alumni and that you have fond memories of your time there. I'm not sure when you went to law school.

**Mr. Murray Rankin:** Years ago, decades....

**Ms. Lisa Cirillo:** The programs have evolved a lot. Part of the reason we spent so much time in our submission talking about the level of supervision and the training is to highlight that when a client comes to us for legal assistance, they're not just working with a law student who is out there on their own. They're actually getting the benefit of a team, a supervising lawyer and a law student. As you'll see when you look at our brief, many of our clinics offer other kinds of assistance. We have many criminal clients who are simultaneously family clients or refugee clients. They're accessing support through our social work services.

For a low-income, vulnerable client who is probably racialized and may not speak English, if the alternatives are getting our assistance or nothing, I would very strongly say they're better off getting assistance from our clinics.

● (1640)

**The Chair:** Thank you.

**Mr. Murray Rankin:** Am I out of time?

**The Chair:** Yes, you've exceeded it.

Mr. Fraser.

**Mr. Colin Fraser (West Nova, Lib.):** Thank you very much.

Thank you to all the witnesses for being here, and thank you to those who have been here before and have agreed to come back and share your thoughts. It's much appreciated.

I'd like to begin with the Student Legal Aid Services Societies. I appreciated your presentation. I read the recommended wording that you have for 802.1, in order to modify that to allow law students and article clerks to continue to appear. I believe it is important, and I know we're considering all options to make sure that happens.

In reading your recommended wording, it would appear that it would be allowing law students to represent clients who are facing jeopardy of two years less a day. That's a firm six months, obviously, so it's for more serious sets of circumstances. Do you have any concern about somebody with a lack of experience actually being a member of the bar? I know they're going to be supervised by a lawyer in order to qualify for the recommended wording you have, but do you have any concern that the level of jeopardy is perhaps beyond the experience level of that individual?

**Mr. Douglas D. Ferguson:** I'll answer that, if I may.

We have a very good record of success on behalf of our clients. In fact, my clinic did a study about 10 years ago where we compared our results on assault charges to that of the private bar, duty counsel, and self-represented individuals. We found that our students had the best record—to our surprise, to be honest.

Because they're so closely supervised by criminal lawyers, I think they do have the capacity to handle some of these hybrid offences that may be new to us. As I said, if there are any concerns with that, we would recommend that we list a few serious offences for which our agents could not appear, but the default should be that we appear on everything else.

**Mr. Colin Fraser:** Go ahead, Ms. Cirillo.

**Ms. Lisa Cirillo:** I would like to add one thing too.

I would also say that our students do incredibly important, serious work across areas of practice. We have students who represent clients who are making refugee claims and say that if they're deported they're facing death in their country of origin. Our students do custody and access cases. I don't think there's anything about a particular kind of criminal case that makes it impossible for the students to do. I guess I would say I would reject that notion.

At my clinic now, when we have clients who come in and are charged with super summary offenses, the Toronto courts will let our students assist them behind the scenes up to trial, and if they have to go to trial on their own, we have a comprehensive kind of self-help kit that we give them. I would tell you, however, that if you ask them, they would much rather have my students continue to go to court and represent them at that trial than to have to go on their own. When our students go to court, our supervising lawyer is there, so they are getting a very extensive kind of support.

**Mr. Colin Fraser:** Thank you.

What about Ms. Taman's suggestion that there could be a scale of offences—some that qualify and some that don't—with all these new hybrid offences?

**Ms. Lisa Cirillo:** I think Ms. Taman was responding to our submissions, and as my colleague Ms. Johnson said in her remarks, our preference would be to use the wording we provided. If that is of concern to the committee, then yes, we would agree that there could be a schedule of offences that the committee might carve out, saying, "In these ones we're not going to allow students in programs to go." Again, these are about students in these kinds of programs. We're not talking about law student vigilantes going out and doing work on their own.

**Mr. Colin Fraser:** I appreciate that. Thanks very much.

Ms. Taman, I'll turn to you. You might want to jump in on this. I have another question for you, as well.

**Ms. Emilie Taman:** I just wanted to really quickly add that I would support what's being advocated in terms of supervised students. My concern is that agents can be people with no legal training at all. That's where I would be concerned.

**Mr. Colin Fraser:** Fair enough. That's a good point.

We've heard concern on this committee about leniency when some sentences are hybridized and the Crown is allowed to make an election by summary offence. You did a good job of explaining how that process works. I appreciate that.

You mentioned this briefly in some other answers. Can you talk a bit about what you would see happening to two fact patterns that are the exact same, one proceeding by indictment and one proceeding by summary conviction, because the Crown makes the election?

When you consider the circumstances of the accused, the circumstances of the offence and the principles of sentencing as set out in the code, do you see there being a concern that the sentences would be different, especially given the fact that case law would still be applicable to any new sentencing decisions?

● (1645)

**Ms. Emilie Taman:** Judicial discretion in sentencing is not fettered by the length of available sentence or by whether it is a summary conviction offence or an indictable offence. It's fettered by the maximum punishment. What I'm clumsily trying to say here is that I don't think how you classify the offence has an effect on the length of the sentence, except with respect to the ceiling. I did a bit of quick and dirty research earlier and found many examples of people who were charged with indictable offences that have maximum penalties of up to five or 10 years but were sentenced to fewer than two years.

What I really want to emphasize is that even if the Crown were to proceed indictably in the context of these newly hybridized offences, there's no guarantee that those who proceed by indictment will get punishments longer than two years. That doesn't become the floor when you proceed by indictment.

**Mr. Colin Fraser:** Fair enough. Thank you very much.

Professor Parkes, I'll turn to you for a moment.

You talked about your concern with inflationary sentences as a result of increasing the maximum available for summary offences. If the bill was modified to allow the current offences, which are just summary conviction offences, to stay the same and all of the ones that are straight indictable to become hybridized, so they'd be two years less a day, would that solve the problem of inflationary sentences?

**Ms. Debra Parkes:** I don't know that I understand the question.

**Mr. Colin Fraser:** The ones that are straight indictable right now, that are being hybridized, those go to two years less a day if proceeded by summary conviction.

**Ms. Debra Parkes:** Yes.

**Mr. Colin Fraser:** If the ones that are currently summary, which are being upped to the maximum of two years less a day, stayed the same, would that solve the issue for you?

**Ms. Debra Parkes:** That is an interesting point. If anything, making these offences, which are otherwise pure indictable, summary convictions would maybe signal that there's a lower end that ought not to be receiving the high punishments. Yes, I am concerned that in this move to open up hybridization and to open up opportunities in provincial court for summary conviction and supposedly for the efficiency benefits that would come up with that, that we've also included all of the other offences, as you said, and raised the ceiling on those. That is where you're likely to have the most inflationary effect.

Again, when I'm talking about this "sentence creep" and the research on that, it's not about formally, necessarily.... Certainly you see it when you have mandatory minimums, but I don't know that I could say with any certainty that, even having the new hybrid offences for which you have the summary conviction maximum of two years less a day, it wouldn't have some impact on the "sentence creep". But I think it would be a lot less than when you're raising the ceiling on the other ones.

**Mr. Colin Fraser:** I just have one other quick question, if I have any time left.

**The Chair:** You don't, but if it's one really quick question....

**Mr. Colin Fraser:** The Canadian Bar Association suggested wording to the effect that, for greater certainty, there's no intention of Parliament to have inflationary sentencing.

Do you think that any statement like that in the code would help?

**Ms. Debra Parkes:** I'm not optimistic. I think if you're not satisfied, you should be concerned about this. It would be better than nothing to have that language in there, so I would support that. However, I do still worry, and the research from numerous jurisdictions shows, that when you start raising the ceiling this way, you do have that inflationary effect.

I don't know what kind of an impact that would have, but it would certainly be better than not including it.

**Mr. Colin Fraser:** Thank you very much.

**The Chair:** Thank you very much.

I really appreciate this panel's spending time with us today. It's very much appreciated. It goes to the challenges that we have, when you see the different views on sentencing, for example, that different members of the panel have, with completely opposite recommendations with respect to sentencing. Again, we will do our best, and we certainly hear the problems that you have raised. Thank you.

Members of the committee, as you know, we have votes, and we also have a reception that some of us want to go to.

● (1650)

**Hon. Tony Clement:** What reception is that?

**The Chair:** The CIJA reception.

**Hon. Tony Clement:** Yes, I'd like to go to that.

**The Chair:** We're reconvening with the next panel at 6:45 p.m. or as soon as the vote is over, so come back here after the votes.

Thank you, everybody.

We're in recess.

●

_____ (Pause) _____

●

● (1830)

**The Chair:** It gives me great pleasure to reconvene the meeting and welcome this panel who are going to testify on Bill C-75.

I would like to welcome, from the Association of Justice Counsel, Ms. Ursula Hendel, who is the president. From B'nai Brith Canada, we are joined by Mr. Brian Herman, director of government relations, and Mr. Leo Adler, senior legal counsel.

We will be joined shortly by the Centre for Israel and Jewish Affairs, represented by Mr. Shimon Koffler Fogel, chief executive officer; and from the Barbra Schlifer Commemorative Clinic, we will be joined by Deepa Mattoo, director of legal services, and Simran Dosanjh, a law student. They will be here by video conference from Toronto. When they join us, they will come up on the screen. When Mr. Fogel comes in, he will be seated over there.

In the meantime, we'll start hearing testimony.

Ms. Hendel, the floor is yours.

● (1835)

**Ms. Ursula Hendel (President, Association of Justice Counsel):** Good evening, everyone.

I'm Ursula Hendel, and I'm the president of the Association of Justice Counsel. It is always a pleasure to appear in committee, but particularly so for me today, because the issue of delay in the criminal justice system is one of extreme importance to me and my membership.

By way of background, the association represents the 2,600 lawyers who work for the federal government. That includes the legislative drafters who prepared the bill, the criminal law policy sector lawyers who testified in front of you last Monday, and also all of the prosecutors who work for the Public Prosecution Service of Canada. The federal prosecutors have responsibility for human trafficking, terrorism and organized crime prosecutions. We're Criminal Code prosecutors in Canada's north. We do environmental pollution and tax evasion, and the bread and butter of our work is drug prosecutions throughout Canada.

I told the chair I'd been listening to the testimony of all the witnesses—I've also read all of the bill—and I was impressed by the number of defence counsel who came before you to speak so passionately on issues they care very much about. Like them, for many of us, prosecutions is a calling. We are deeply committed to the system. It's not a job or a paycheque, and we are highly committed to it. We consider ourselves to be heavily invested.

We're very concerned about the issue of delay. You've heard from victims of violence, who spoke about and reminded us how important it is for their needs not to fall through the cracks in a stressed out system. You also heard a story about a young woman who was on bail conditions that prevented her from accessing the treatment centre that was at the very underpinning of her criminality and was the very hope for her success. That shouldn't happen. It doesn't happen because lawyers and judges are mean or incompetent. It happens because we don't have enough resources to do our jobs properly.

We had another warning—maybe a final warning—from the Supreme Court of Canada about delay in the criminal justice system a little more than two years ago. Since that time, some provincial attorneys general have taken immediate steps and hired additional prosecutors and judges. However, the federal government didn't follow suit, and there were no new resources for federal prosecutors.

A number of you in this committee expressed concerns last year about resourcing for federal prosecutors and the adequacy of resourcing for them. That is a concern I share. I'm sorry to report that things haven't improved since then. They've gotten worse. This year, in 2018, the PPSC has an anticipated budget shortfall and has accordingly required most regional offices to cut their operating budgets by 7.5%. We are being asked to do more with less.

We had a lot of hopes that the bill was going to provide us with some relief, because we're not getting any on the resourcing front. I listened intently, and there were three things that were said to cumulatively reduce delay. Those were the preliminary inquiry changes, hybridization and the administration of justice offence measures.

You've heard a lot about the preliminary inquiry, and what is striking is the near unanimity of the messaging. We're on opposite sides of an adversarial system, and it's not common for prosecutors and defence counsel to agree on very many issues of criminal justice policy. It's therefore quite striking that those of us who are on the front line are fairly universally of the view that the preliminary inquiry reforms are not going to fix the delay problem.

That's true for hybridization as well, but I just want to tell you that for federal prosecutors in particular, even if you aren't convinced that it's true, there's very little relief for us in this bill. The offences that we prosecute mostly—terrorism, human trafficking and major drug trafficking—are offences that carry life sentence maximums. The changes to hybridization and the changes to preliminary inquiries that are being proposed in the bill, by and large, don't affect us at all. We've been sort of left out.

● (1840)

That leaves us with the issue of the administration of justice offences, which perhaps hasn't been talked about quite as much, so I thought I would do so.

We were told that the AOJA offences are very numerous. I think the figure I heard was that 23% of all cases in the system are those kinds of offences. They're not actually federal offences. They're provincially prosecuted, although we do end up prosecuting many of them in what's known as "major-minor" agreements. Where there is a more serious charge on the cocaine trafficking file and that person has been released on bail but breaches that bail and there's a charge laid, that ends up tagging along in a major-minor agreement. The federal prosecutor will prosecute both of them. Thus, we do end up doing a fair bit.

That's important context to the statistics, because although they may be numerous and there may be a very valid debate as to whether there is overcharging and whether there are too many charges and we can do better in terms of having fewer of these charges, numerically, statistically, I don't think they're contributing in any meaningful way to the problem of delay. That's because they tend to tag along. The major charge gets prosecuted, and the breach follows along. When the major charge is resolved, however it's resolved, whether there's a conviction, a trial, a guilty plea, or an acquittal, the breach is then dealt with, usually in a summary fashion.

I've been a prosecutor for just over 20 years. I have worked in the GTA and in Ottawa, and I've also been fortunate enough to work in Canada's Far North. I've seen a couple of different systems. In a hamlet of 500 people in the north where there are two police officers, if you're put on bail and given bail conditions, you are extremely likely to get caught if you breach them, because that officer knows you and sees you every day. If you compare it with Toronto where, the moment you walk out of Old City Hall, you melt into anonymity, you find that there are many more administration of justice offences per capita in the north than in the major centres.

If they were contributing materially to delay, you would think the problem of delay would be much worse in the north than it is in Toronto, but it's actually the reverse. I have some ideas about why that is, but I'm not sure I have time to talk about them all.

Where I'm concerned is that the bill proposes to create yet another process. There's this new concept of a judicial referral hearing, a voluntary process that the Crown gets to engage, that doesn't really seem to add any new powers or new tools other than to add yet another layer. I'm not sure how the introduction of yet a new process in the very place that we are already congested is going to reduce delay.

We don't feel that there's really anything in the bill that's going to make the problem of delay better. We've come here today to humbly ask you for your help. There remains a really pressing need to tackle the problems of delay in the criminal justice system. It's not over. The work isn't done. In fact, it's barely even started. I would suggest that it should be done on a really urgent basis.

Thank you very much for listening.

**The Chair:** Thank you very much. I appreciate that perspective.

B'nai Brith, you are up.

**Mr. Brian Herman (Director, Government Relations, B'nai Brith Canada):** Thank you very much, Mr. Chairman, and we thank the committee for allowing us to appear this evening.

My colleague Leo Adler, our senior legal counsel, will elaborate on some of our key points, particularly the legal issues. I just wanted to give a brief introduction.

You have our legal submission and some related documents, which I hope have made their way to all committee members.

I am not sure if everyone is acquainted with B'nai Brith Canada. We have been before your committee previously. It was founded in 1875, with a history of defending the human rights of Canada's Jewish community and Canadians all across the country. Together with our League for Human Rights, we advocate for the interests of the grassroots Jewish community and for their rights such as freedom of conscience and religion, rights that we know are important to all Canadians.

The point I wanted to make is that our comments will be consistent with testimony before several standing committees in the past year, including my own remarks to this committee on Bill C-51 on October 30 of last year.

We hope the committee will continue to bear in mind that Canada's most targeted religious minority, in terms of hate speech and hate crimes, is the Jewish community. Our comments are rooted in that fact. In particular, we are ever-mindful of the signals Parliament and the government send to our communities as amendments to various pieces of legislation take shape over time.

We followed the government's several initiatives to modernize both the Criminal Code and the national security framework, including plans to deal with provisions that are focused on expediency or efficiency. These aims must not supersede the essential prerequisites of fairness and balance, nor must they supersede the requirement for our publics to know, and for perpetrators to understand, the severity of penalties that would accompany advocating or promoting genocide or in any way supporting terrorism.

Our question remains a straightforward one: whether proposed changes taken holistically represent a weakening of essential provisions in the Criminal Code and other legislation that is perceived by the public and by law enforcement as meaning the government takes these offences less seriously. This is the context, and we have concerns with specific aspects of hybridization—as Mr. Adler will outline. Certain of these offences are very serious. Notwithstanding government assurances, how does this square with an implicit aim of affording Crown counsel greater discretion in how to proceed with less serious offences?

We believe that, in today's context, we must exercise great care in taking actions that can be misinterpreted, and the signal such a step would convey in today's environment where anti-Semitism, hate speech, and advocacy to serious crimes such as genocide remain serious challenges, if not in Canada then elsewhere.

Our hope is that the committee, in essence, will recommend that offences related to advocating genocide and offences that are terrorism-related are not hybridized and remain indictable. Mr. Ehsassi has already spoken eloquently today pertaining to the genocide point.

As opposed to hybridization, there are other steps that can be taken. Mr. Adler, again, will explain, but in April, B'nai Brith Canada published an "Eight-Point Plan to Tackle Antisemitism". Committee members will have that. One of our recommendations is to publish the Attorney General's guidelines for hate-related prosecutions. We believe more can be done in this area, including for other incitement offences.

While we recognize it falls outside the scope of this draft legislation, we must acknowledge that certain remedies that were contained in section 13 of the Canadian Human Rights Act are part of this overall equation. We accept that freedom of expression is important, but in the context of Bill C-75 the right of potential victims to be free from acts advocating genocide or terrorism and the threat of terrorism must be the greater priority.

Clear penalties help ensure this. We ask committee members to consider carefully the signals they would send by endorsing hybridization of those offences with which we are most concerned.

● (1850)

Thank you.

**Mr. Leo Adler (Senior Legal Counsel, B'nai Brith Canada):** Thank you.

Ladies and gentlemen, I think you should have the brief paper that I sent to the committee. I leave that to you to read.

I want to talk about words, and I want to talk about words that promote and glorify acts in support of genocide and terror. Recently, the Canadian Parliament passed a resolution declaring the Rohingya to be the victims of genocide, yet this very same government wants to reduce the significance of promoting hate and genocide and terror.

This government is about to issue apology for the St. Louis incident, which, of course, was one of the precursors to the Holocaust, yet this government also wants to reduce the significance of promoting hate, genocide and terror.

Canada is a leading member of the ICC, which sets out what are called *jus cogens* crimes. These are crimes that are universal in their effect and must, under international law, be prosecuted everywhere. That includes genocide. It includes terror. Yet this government wants to reduce the significance of promoting hate, genocide and terror.

Canada has sent UN peacekeeping troops, I believe to Mali. What do you think occurred there? It was terror, yet this government wants to reduce the significance of the meaning of promoting hate, genocide and terror.

Chief Justice McLachlin, in the Khawaja case, which was one of the first cases dealing with terrorism, said, "Threats of violence, like violence, undermine the rule of law."

As I wrote in dissent in Keegstra, which was an earlier case from the Supreme Court of Canada upholding the indictable offence of hate speech, threats of violence take away free choice and undermine freedom of action. They undermine the very values and social conditions that are necessary for the continued existence of freedom of expression, yet this government wishes to reduce it to a summary conviction or hybrid offence.

A few years ago, I had the pleasure of being a witness in front of the Senate and for the passage of the Justice for Victims of Terrorism Act. One of the preambles says:

> Whereas hundreds of Canadians have been murdered or injured in terrorist attacks; [and]
>
> Whereas terrorism is dependent on financial and material support;

It then goes on to create this act.

How do you think they get the money? How do you think they're able to come and go? It is through words and through the assistance of others, yet you want to turn this into a hybrid offence.

In the most recent terrorist threat to Canada public report, 2017, issued by Public Safety Canada, the minister's forward says, on page one:

> Sadly, Canadians have become all too familiar with the tragic consequences - from the shooting at a mosque in Quebec City, which claimed six lives and injured many more, to the terrorist attack in Burkina Faso in which six Canadians were killed. Most recently, a police officer was stabbed and several bystanders were injured in Edmonton.

He goes on to talk about how security and intelligence agencies work in close collaboration with our allies: the Five Eyes, of course, the European Union and so on.

What message are you sending to those allies when you say we can somehow delineate which words are serious threats in terms of terror, in terms of genocide, and which words are serious when it comes to the promotion of these matters? You absolutely cannot, as Chief Justice McLachlin pointed out.

In the executive summary of this report, it says, "Extremist groups continue to use technology and social media as a means to recruit followers and promote their ideology," yet you want to turn it into a hybrid-offence summary conviction along with shoplifting, common assault and car theft.

● (1855)

Is that where you really want to go for these most serious of crimes that constitute the basis of the International Criminal Court and for the Nuremberg tribunals and that constitute what happened in Yugoslavia and Rwanda? Is this where you want to go?

They go on in the executive summary to talk about stemming the flow of extremist travellers, yet that's going to become a hybrid offence, the leaving of Canada to go in—

**The Chair:** Mr. Adler, you're way over your time at this point.

**Mr. Leo Adler:** All right.

Let me just say that those are not the areas for you to hybridize. Frankly, if you want to deal with increasing the efficiency of courts, I'd be happy to tell you how you should cut, not add, to the Criminal Code and learn to recognize the difference between a minor crime of momentary stupidity or inadvertence versus an actual major crime.

Thank you.

**The Chair:** Thank you very much.

We'll move to the Centre for Israel and Jewish Affairs with Mr. Fogel.

**Mr. Shimon Koffler Fogel (Chief Executive Officer, Centre for Israel and Jewish Affairs):** I thank you on behalf of CIJA for inviting us into this important conversation. I see friends on all sides of the House. It's an honour to be with you. Just by way of identification, the Centre for Israel and Jewish Affairs is the advocacy agent of the Jewish Federations of Canada. We're a national non-partisan and non-profit organization representing tens of thousands of Jewish Canadians affiliated through local federations across Canada.

On Bill C-75, our specific area of interest is the hybridization of some offences that—as was noted by my colleagues at B'nai Brith—currently may only be prosecuted as indictable offences. Our request is simple and focused: that Bill C-75 be amended to ensure that advocating genocide and terrorism-related offences are exempt from this broad hybridization and instead remain indictable offences.

We advocate removing the following: clause 16, providing or making available property or services for terrorist purposes; clause 17, using or possessing property for terrorist purposes; clause 20, knowingly participating in or contributing to the activity of a terrorist group; clause 21, leaving Canada to participate in the activity of a terrorist group; proposed subsections 83.23(1) and (2), knowingly harbouring a person who carried out terrorist activity or is likely to carry out terrorist activity; clause 122, advocating genocide; and finally, subclause 407(5), counselling commission of a terrorism offence.

We take no position on other aspects of Bill C-75 and do not object to its overall goals. Modernizing Canada's justice system and reducing backlog in the courts are vital objectives, and we acknowledge that hybridizing some indictable offences will contribute to this effort.

We also recognize that hybridizing what is currently an indictable offence does not mean that prosecutors will invariably choose to prosecute these crimes as summary offences, and we note that the bill proposes to increase the maximum penalty of summary offences to two years less a day.

However, we do believe that advocating genocide and terrorism-related offences should not be hybridized. Our position is rooted in three principle considerations.

First, on a practical level, terrorism-related offences and advocating genocide constitute a minute fraction of criminal cases in Canada. Recategorizing these crimes as hybrid offences will have virtually no impact on the current judicial backlog. It therefore follows that exempting them from this initiative will not diminish the underlying goal of Bill C-75.

Second, maintaining these crimes' current designation as indictable offences does not undermine judicial discretion in the sentencing of these cases. Because these crimes do not carry mandatory minimum sentences, judges may determine on a case-by-case basis the sentence most appropriate given all factors. It is one thing to allow judges sentencing discretion within a framework that affirms that a great violation of the law has taken place, that is, the designation of indictable offence. It's another to allow prosecutors the discretion to proceed on the basis that diminishes the very gravity of the crime, that is, by having the option to prosecute these violations as summary offences.

Third, and most important, allowing these offences to be prosecuted as summary offences sends a clear and unacceptable signal, diminishing the inherently grave, even heinous, nature of these crimes. Advocating genocide and terrorism-related offences are crimes that, while obviously impacting victims directly, also threaten the very foundation of Canadian democracy and universal human rights. These offences cannot, for example, be considered on a par with property crimes. Rather, they should be viewed alongside Criminal Code provisions related to treason or acts of violence to intimidate Parliament, both of which are indictable offences that Bill C-75, quite rightly, does not suggest hybridizing.

A person charged with a summary offence is not usually held in custody but given notice to appear in court. This is worrisome when it comes to advocating genocide and other terrorism-related offences. In the relatively rare instances when these provisions are used, it is almost certainly for high-profile crimes that carry with them a risk of mass violence and significant public alarm.

● (1900)

Like many in my community, I'm the child of Holocaust survivors. The Jewish people are tragically familiar with the dangers of genocidal propaganda, which often preceded such horrific campaigns of ethnic cleansing as the Holocaust, the Rwandan genocide, and other atrocities. Society ignores at its peril those who call for the mass murder of entire communities, which is why the Criminal Code prohibits advocating genocide.

Given the premium we rightly place on the freedom of speech, the threshold for pursuing those charges is exceptionally high. Experience shows that those who surpass this already-elevated threshold are engaged in the most egregious violations. To be blunt, this provision is used in very rare circumstances against those who actively promote grotesque, dehumanizing propaganda to advance a genocidal agenda. Such cases should only ever be treated as indictable offences.

Similarly, the global Jewish community has had painful, first-hand experience with terrorism. Committee members are familiar with the history of terrorism targeting Israelis. Jewish communities worldwide have also been vulnerable to such violence, as seen in terror attacks in recent years at a synagogue in Copenhagen, a Jewish museum in Brussels, a kosher grocery store in Paris, a Jewish elementary school in Toulouse, and a Jewish community centre in Mumbai.

By definition, terrorism seeks to use violence to spread fear far beyond its immediate targets. Attackers typically benefit from the support of a broader network that includes ideological mentors and clandestine members of proscribed terrorist organizations. These background criminal activities, such as counselling terrorism or knowingly participating in the activity of a terrorist group, help make large-scale terror attacks possible. In recognition of the threat and danger posed by terrorism, these crimes should never be prosecuted as summary offences.

I thank the committee members for their consideration of what I think are modest amendments to Bill C-75 that preserve the bill's objectives while ensuring that these grave crimes maintain the designation they warrant. I welcome any questions or comments that you may want to pose.

Thank you.

**The Chair:** Thank you very much.

We're also joined from Toronto by the Barbara Schlifer Commemorative Clinic.

Ms. Mattoo and Ms. Dosanjh, the floor is yours.

**Ms. Deepa Mattoo (Director, Legal Services, Barbra Schlifer Commemorative Clinic):** Thank you.

Thank you, honourable Chair and committee members. We are honoured and grateful to have the opportunity to speak to you today about the significant impact that some of the changes proposed in Bill C-75 may have on the women the Barbara Schlifer Commemorative Clinic serves.

Some of you might not be aware of the clinic. To give you a brief background, our clinic is unique in Canada. It is the only clinic that provides specialized services for women who have experienced violence.

Since 1985, the clinic has provided legal representation—

● (1905)

**The Chair:** Ms. Mattoo, I'm getting a request for you to please try to speak up and perhaps also slightly more slowly.

**Ms. Deepa Mattoo:** Yes, the slow part I completely agree with. As it is for many other people, English is my second language and I go very fast. I think I compensate for the language.

**The Chair:** That was perfect.

**Ms. Deepa Mattoo:** I'll repeat from where I left off.

Our clinic is unique in Canada. It's the only clinic that provides specialized services to women who have experienced violence. Since 1985, the clinic has provided legal representation, counselling, and language interpretation services to over 65,000 women. Over the years, we have experienced a steady increase in the number of women seeking assistance. In 2017, we served 4,700 women. Last year we saw an 84% increase, and we served 7,000 women.

We want to submit to the committee that, broadly speaking, the clinic welcomes proposed amendments to broaden the definition of "intimate partner" to include dating and former partners, as well as the amendments that reflect a desire to safeguard the interests of women.

At the same time, however, the clinic is concerned that some of these changes will place an undue burden on women who are subjected to criminal responses. With that in mind, we are proposing that the committee undertake an impact assessment to determine the impact of Bill C-75 on women. I will be focusing on four areas today to support that.

First, the proposed amendment fails to consider how increased penalties related to intimate partner violence can further criminalize women, and fails to consider the impact of mandatory charging policies related to intimate partner violence on racialized and immigrant women.

I will also be making submissions on amendments that could further impact the lack of agency that women generally experience in the criminal justice system.

The last point is that the government's objective of improving access to justice for marginalized, racialized and indigenous women with these amendments does not necessarily impact in the correct way the women who belong to these groups.

There are some other, additional changes that the bill is proposing that we are concerned about. We specifically want to make submissions around the bawdy house, indecent act and vagrancy provisions, as well as the prohibition on the provision of sexual services. We are requesting that the committee consider repealing this under this bill.

We are also concerned that lumping all summary conviction offences under serious criminality may increase barriers to access to justice and finding of inadmissibility under the Immigration and Refugee Protection Act. We find that the implications of that were not at all considered by the makers of this bill.

With regard to the mandatory charging policies, we all know that these policies came into being for better protection. However, what we have seen is that the application of these policies over the years has, in many cases, created a situation where when the police receive a call from an intimate partner violence situation, they are required to act. There is lack of discretion for the cops in these situations. In some cases, what we see is that the perpetrators, or the instigators, of the violence will use the threat or action of calling the police as a weapon against their victim. When this threat is acted on for a variety of reasons, including retaliation or control, the police are forced to charge the woman instead of the man, a woman who was either a blameless survivor—a victim—or who used physical force in self-defence. Abusers may misuse mandatory charging in order to further terrorize, punish, intimidate and control their partners.

This may have extremely negative consequences, including, but not limited to, cases where the children are left with the instigator while the person who is a survivor is removed. Bill C-75 fails to consider the experiences of the survivors of intimate partner violence who are not the primary aggressors. The bill similarly fails to consider history of experienced abuse in sentencing or bail considerations for this population. These omissions can have devastating consequences on women who are criminalized under the criminal justice system. In addition, most of these women are from racialized backgrounds, and I'll be addressing that next.

It is widely recognized that the criminal justice system disproportionately impacts marginalized, racialized and indigenous people. Women from these backgrounds who are charged with violence toward an intimate partner are more likely to face the full force of the penal law. Bill C-75 provides the means by which this can happen by increasing the maximum penalties for the repeat offender. Along with the specific provision that increases the incarceration ceiling for intimate partner violence, Bill C-75 also raises the maximum penalties for summary convictions from six months to two years. This means that racialized, marginalized and indigenous women facing these summary charges, who are more likely to face poverty, encounter further barriers to justice.

● (1910)

In addition to that, raising the maximum penalties from six months to two years means that, under section 802.1 of the Criminal Code, women from these particular backgrounds will not be able to rely on paralegals or law students for their representation. These agents are cost-effective alternatives to retaining a counsellor, and that will be denied to marginalized women. This raises a constitutional issue related to the right of a fair trial, access to justice and equality rights. These issues must be canvassed, and what we propose is that there should be an impact assessment, as suggested above, on the situation of women.

My last point is about the impact on the survivors of violence. Bill C-75 fails to consider how the increased penalty for intimate partner violence can enhance the lack of urgency that female complainants generally face in the justice system. A women experiencing violence, when she interacts with the justice system, may or may not be accessing these services without fully appreciating the outcome of this call that she's making. Once a charge is laid, a female complainant is more or less completely removed from the process. This is something that we also hear routinely from survivors of sexual assault and survivors of various kinds of intimate partner violence.

Although a woman may seek to have the charges removed for a variety of reasons, Crowns are often unwilling to consider these considerations. These reasons can include, but are not limited to, reliance on her partner for immigration status, economic and emotional support, and a desire not to be called as a witness.

This can result in women feeling powerless and patronized. This will further deteriorate the sense of powerlessness by increasing the legal jeopardy for abusers, which invariably impacts their lives with their intimate partners. Women who rely on their partners for economic security may be further impacted by the victim fine surcharge amendments. What we see, which could be an unintended consequence of the bill, is that, in many cases, requiring a fine for each offence can take significant assets out of the hands of women and children who are left economically vulnerable, further contributing to their sense of powerlessness.

I just want to say there are two additional points, as I submitted at the beginning, that this bill is kind of failing to do, so there are some great changes, as we've said, and we welcome those changes.

One of the biggest changes that we see that this bill is failing to amend is something that has been proposed by the Supreme Court of Canada. The Supreme Court of Canada acknowledged in Bedford that criminalization of—

**The Chair:** I'm sorry again, Ms. Mattoo. Translation is having difficulty. You're going too fast.

**Ms. Deepa Mattoo:** Okay.

**The Chair:** You have about two and a half minutes left. Can you just try to go slightly slower?

**Ms. Deepa Mattoo:** Yes.

Eight minutes puts pressure on people, right? Okay, I'll try to be slow.

**The Chair:** That's why I'm giving you 10 and a half minutes. You're at eight now. We're giving you 10 and a half.

**Ms. Deepa Mattoo:** Amazing. Thank you, Chair.

I would like to submit that, like many other advocates, we believe the bill also impacts women in what it fails to amend. Specifically it fails to amend and strike the Criminal Code to revoke the bawdy house, indecent act and vagrancy provisions. The Supreme Court of Canada acknowledged in Bedford that criminalization of sex workers puts women at an increased risk of victimization. These offences serve to simultaneously criminalize and victimize women, in particular racialized indigenous women, and the clinic submits that, to help end the cycle of violence that women face, these offences should be revoked.

Last, what I want to talk about is the serious criminality under the Immigration and Refugee Protection Act that creates inadmissibility provisions. We feel that Bill C-75 proposes to increase the maximum sentence for summary conviction offences, and an unintended consequence of this would be that women will find themselves in a situation where they're escaping domestic violence and intimate partner violence and getting caught in inadmissibility.

Due to the fact that there are a lot of women who come to this country dependent on their intimate partners, as in spousal sponsorship schemes, it is important that an impact assessment of what would happen to their cases and their situation be considered.

With that, I would say thank you for giving us this opportunity. I'm happy to take any questions or comments that you may have.

Thank you.

● (1915)

**The Chair:** Thank you very much.

We will now start with our round of questions.

Mr. Cooper.

**Mr. Michael Cooper (St. Albert—Edmonton, CPC):** Thank you, Mr. Chair.

Thank you to the witnesses.

Perhaps I'll begin with Mr. Adler and your presentation respecting the hybridization of certain very serious offences, including subsection 318(1) of the Criminal Code. I've expressed concerns about the reclassification of what I think are nothing other than serious indictable offences under the Criminal Code.

We heard from the Minister of Justice who came before the committee and said there really is no problem. She said it had nothing to do with sentencing and nothing to do with sentencing principles. It has nothing to do with, in any way, minimizing the seriousness of an offence. It is all about efficiency. It is all about providing prosecutors with discretion.

What would you say in response to that?

**Mr. Leo Adler:** First, as was pointed out by Mr. Ehsassi earlier and by others, the number of prosecutions is so minimal that it has no effect on efficiency.

On the other hand, you don't give prosecutors discretion when it comes to crimes that are universally considered to be *jus cogens* crimes. Canada has signed on to the treaties, including the genocide convention, which by itself prohibits the promotion and glorification of genocide.

Leaving it to a prosecutor is like leaving to the Nuremberg prosecutors to say, "You know what, let's call this a summary conviction offence." Can you imagine the prisoners in the dock being told, "Don't worry"? It's not the penalty. It's the title of summary conviction.

**Mr. Michael Cooper:** If we're going to treat offences like that as summary conviction offences and potentially hybridize them all in the name of giving prosecutors the greatest amount of discretion to look at the particular facts in each particular case, it begs the question of why we would have indictable offences at all.

**Mr. Leo Adler:** That's a very good point.

The other point is, how are you going to...? Ursula and I have been in this business, combined, for over 60 years. I've been practising for over 40 years. I have yet to have one Crown attorney tell me why he or she is proceeding by way of indictment on a hybrid offence, and another one on the exact same type of charge is proceeding by way of summary conviction. There is no guideline.

Whatever the guideline is—for shoplifting, for stealing a car, or for common assault—we all understand, but when you're promoting a genocide or acts of terror, how could that be anything but the most serious of crimes? In my paper I talk about some of the penalties. Life sentences have been handed out. Twenty-year sentences have been handed out because it's the words that lead to the acts.

**Mr. Michael Cooper:** In terms of the election on the part of the prosecutor, you alluded to the idea that there is no transparency and no consistency. You're creating a patchwork of inconsistencies all across Canada.

**Mr. Leo Adler:** That is one of the things that my colleague talked about, which is to at least get the guidelines done clearly. Frankly, if there's going to be hybridization for anything, let's make them clear.

**Mr. Michael Cooper:** Thank you, Mr. Adler, for that.

I'll move on then to Ms. Hendel. You made reference that in your opinion hybridization is not going to increase efficiencies. You didn't elaborate on it. Could you take this time to elaborate on some of the reasons for your conclusion that hybridization will not increase efficiencies in the courts?

● (1920)

**Ms. Ursula Hendel:** The concept behind hybridization was to allow for flexibility. In some jurisdictions the superior courts are more congested and in others the provincial courts are more congested. I think the thinking behind the bill was that allowing more offences to be hybridized would give the system participants more ability to juggle where the bulk of the workload falls.

The case still needs to be prosecuted. It's not going away. We may be making better use of existing resources, but we're not shortening trials, we're not providing additional resources and we're not, in large measure, improving on the efficiency of the proceeding internally. Those are the three things that I think we should be doing if we really want to tackle the Jordan problem.

**Mr. Michael Cooper:** Thank you.

**The Chair:** Thank you very much.

Next up we have Mr. Boissonnault and Mr. Virani, who are sharing time.

Mr. Boissonnault.

**Mr. Randy Boissonnault (Edmonton Centre, Lib.):** Thanks, Mr. Chair.

I have three questions for Ms. Mattoo.

First, we've heard from some LGBTQ2 organizations that it would be wise to add the definition to vulnerable or marginalized populations, specifically including the LGBTQ2 population. Is that something that you and your colleagues would support?

**Ms. Deepa Mattoo:** Yes, absolutely.

**Mr. Randy Boissonnault:** Thank you very much.

I have another question. When we were doing our study on human trafficking and vulnerable populations and sexually violent acts against women, we heard that often when victims have to be subjected to multiple preliminary hearings, they fall out of the process because they don't want to be revictimized. That reduces not just the charge rate, but the actual conviction rate. Is it the experience with the people you work with that preliminary hearings are an obstacle to justice?

If we removed them and went straight to trial, would that help protect the victims and speed up the process?

**Ms. Deepa Mattoo:** I wouldn't necessarily say that removing the preliminary hearing and taking cases directly to trial would change their experience of the justice process. A preliminary hearing is a low-barrier access-to-justice space. They are able to actually go through a process that can sometimes help them to not go through the whole process eventually, depending on the direction the case takes. Repeating your story again and again and going through that whole retraumatization is definitely something I agree with in your question, but I don't necessarily think removing preliminary hearings will help, especially the clients we are discussing today, who are criminalized through the processes. I don't think that's something that will help.

**Mr. Randy Boissonnault:** Thank you.

Could you clarify your comments on the reverse onus process? Are you in favour of what's written here or do you see it being used as a tool against marginalized and vulnerable women by the original aggressor?

**Ms. Deepa Mattoo:** The population we're talking about in particular, I think, was missed from the equation when the bill was drafted. We are talking about women who are criminalized. Unfortunately, we are seeing these cases more and more. A few years back, we saw dual charging at one point, where the aggressor and survivor would both be charged.

Now we see more and more cases where the situation is manipulated and it's only the survivor who is charged. The reverse onus in those particular cases does not consider that the survivor, who is being criminalized, is the survivor. She's the one with a history of experienced abuse. We are making a submission that the experience of this population, which is primarily an immigrant and indigenous population, needs to be considered.

**Mr. Randy Boissonnault:** I appreciate that. Thank you very much.

Ms. Hendel, you mentioned in your submission that some of the administration of justice charges are batched with the more serious offences. We heard from Mr. Rudin of Aboriginal Legal Services that in fact that would speed up the system. It would give judges and police the ability to not penalize somebody for missing a bail hearing because they didn't have money for the bus ticket or what have you. Are you saying you don't see that speeding up the system at all and helping? I'm curious.

● (1925)

**Ms. Ursula Hendel:** That's right. One of the chiefs of police testified that police already have discretion not to charge and already exercise it. As prosecutors, we also already have discretion in the code to bring somebody back before the bail court and seek changes to the person's bail conditions without bringing a fresh charge. They're not required to charge. We're not required to prosecute.

I don't know what the judicial referral hearing adds, and I find it particularly interesting that.... Maybe if there were value to a judicial referral hearing, it would place a kind of check and balance on the exercise of police or prosecutorial discretion, but it's at the request of the Crown that the judicial hearing is triggered. If we want to go ahead and lay the charge, then we do, and there's no judicial referral hearing. It doesn't appear to be a check on anybody's discretion. It just appears to be a new tool that we already have.

**Mr. Randy Boissonnault:** Thank you very much.

I'm going to pass my time to Mr. Virani.

**Mr. Arif Virani (Parkdale—High Park, Lib.):** I have about a minute and a half, so I'll go very quickly.

Thank you to all of the witnesses.

I want to direct some questions to Deepa Mattoo. Deepa, it's great to see you again. Thank you for all of your significant work with the South Asian Legal Clinic and now with the Barbra Schlifer clinic.

I have one quick point. You talked in your testimony about intimate partner violence. You appreciate that we are expanding that definition to include dating partners. Can you tell us briefly why you think that's important?

**Ms. Deepa Mattoo:** I think it is important to consider the fact that intimate partner violence is not necessarily the same as we used to understand intimate partner violence to be. Intimate relationships are changing. Therefore, we really welcome this change where you're expanding the definition, because in this time and age we know that intimate relationships are not necessarily monolithic in nature and not one kind.

**Mr. Arif Virani:** I want to build on what Mr. Boissonnault was asking you about the reverse onus provision. We're hearing a lot of different views on this.

Again, Jonathan Rudin was here saying that this will have a differential impact because of this dual-charging mentality that's out there. But the law itself—and correct me if I'm wrong—says the reverse onus is triggered on a bail application if there has been a previous conviction.

Are you saying that women are not only being charged but are being convicted and, therefore, on a second go-round they would be denied bail? Is that the specific concern you're raising?

**Ms. Deepa Mattoo:** Yes. That's exactly the concern we are raising. Most of the convictions we see, or most of the cases where we see that happen, are with women who don't know the language, who don't have access to justice, and who are coming from the most marginalized and most racialized communities.

**Mr. Arif Virani:** I have another brief question on the racialized communities. We've heard a lot about those communities, but not a lot of direct evidence.

One thing that was clear from Mr. Rudin's testimony was that ending the peremptory challenge model we've had for so many years would ensure better diversity of jurors and benefit the indigenous accused who are so overrepresented in our system.

Do you agree with that submission? Does that also apply to other racialized groups such as black Canadians in the system?

**Ms. Deepa Mattoo:** Yes, I think we agree with that particular provision. That's why we didn't address it. That would definitely help.

When we say "racialized" we are using the term in an all-encompassing way, which includes the indigenous population as well as black Canadians.

**Mr. Arif Virani:** Thank you very much.

**The Chair:** Thank you very much.

Mr. Rankin.

**Mr. Murray Rankin:** Thank you to all the witnesses.

I would like to start with Ms. Hendel. You pointed out in your summary that the prosecutor's side—in a rare feat of unanimity with the defence bar—is in "near unanimity" that preliminary inquiry reform won't fix the delay problem. I appreciated that, and I understood your arguments in reply to Mr. Cooper on hybridization.

Could you elaborate a little more about what you were trying to suggest we might specifically do about the administration of justice offences? You talked about small town, big city, but what would you do to fix this bill?

**Ms. Ursula Hendel:** How long do I have?

**Mr. Murray Rankin:** Specifically, I want to make sure we understand what you want to do about the AOJs. I couldn't understand your submission.

**Ms. Ursula Hendel:** We can definitely be looking at ways to encourage less charging. I have no problem with the principle of restraint. That's not problematic, but I think that the fact that there are so many administration of justice charges isn't what's at the heart of why the criminal justice system is so congested.

● (1930)

**Mr. Murray Rankin:** I would like to turn to B'nai Brith and Mr. Herman. I really appreciated your powerful and persuasive presentation. To my friend Mr. Fogel, I say the same. Thank you.

I thought your eight-point plan to tackle anti-Semitism is excellent. Of course, a lot of it, as you will agree, is not at the federal level, nor specific to Bill C-75, so I wanted to focus on those matters that may be pertinent here.

The first, and you referred to it, is the publishing of the Attorney General guidelines for sections 318 and 319 so that we have a better chance to know how to get on the right side of the law, if I can put it that way. But then you said that the prosecution process is currently opaque and open to charges of political bias. Could you elaborate on what that means?

**Mr. Brian Herman:** Thank you for the question.

I think the point we're making there, Mr. Rankin, is that the problem we have is with the hatred offences and the fact that they are already hybrid. The difficulty is obtaining Attorney General consent.

It has been our experience that attorneys general have been reluctant to consent to prosecution of these offences, even in clear-cut cases. That's one of the points we didn't address directly. We're concerned that increasing the maximum sentence from up to six months to up to two years for these offences will make Attorney General consent even harder to get.

**Mr. Murray Rankin:** Got it.

**Mr. Brian Herman:** There used to be a civil remedy to incitement of hatred. That was where I raised the point briefly about section 13 of the Canadian Human Rights Act, but we've lost that remedy. That's one of the concerns we have, but I realize that's outside the scope of the legislation.

**Mr. Murray Rankin:** Mr. Adler has escaped my clutches, so I'm going to have to ask either of you gentlemen, Mr. Fogel or Mr. Herman, about this point.

Prosecutorial discretion to decide whether to proceed by indictment or summary is one of those areas of virtually untrammelled discretion. I think that point was made very powerfully.

I tried to put myself in the position of the people who drafted this bill and decided to make these offences of advocating terrorism or issues involving promoting genocide hybrid offences, and I tried to figure out why they did this. One has to assume that there was some purpose in doing so, rather than just sweeping them into this large category of hybrid offences.

As I say, you've been very powerful, so can I invite you to reflect on what might have led them to do this? Is it your view, like many of the other things we've heard about, that this was a law of unintended consequences, that it was not intentional but simply a lapse, and that we should fix it because it was unintended? Or could there have been an intent on their part to, for example, deal with those things which we see in situations in small towns where people make anti-Semitic slurs and so forth? They go unchecked in the criminal system precisely because they go by indictment, and that is sort of the heavy artillery. Some might say that if you use summary prosecution, you might find yourself bringing more people to justice for that activity.

I'm trying to put myself in the position of how this happened, the position of those who drafted this, and give them the benefit of the doubt and understand why they might have done this. Have you reflected on that?

**Mr. Brian Herman:** Thank you for the question, Mr. Rankin.

We have reflected on that. I must say that in all of this we do have a dialogue with Department of Justice officials where we sometimes discuss with them our concerns and some of the rationale for why they have drafted what they have.

This is where I go to the point that I made about the consistency of what we've been saying when it came to discussing amendments to Bill C-51 and to Bill C-59, and that is the signals that are sent and how in an effort to increase expediency in the system to deal with the charter concerns about efficiency and speed, sometimes there are certain provisions that get caught up in a broad basket of issues and that should not be there. We feel that these particular provisions are so serious as to warrant being kept strictly indicted.

**Mr. Murray Rankin:** I understand.

Mr. Fogel, I thought you made a very powerful point in your submission. You referred to it again orally today.

You've said that terrorism-related offences and advocating genocide constitute a minute fraction of criminal cases in Canada, and that recategorizing these crimes as hybrid offences will have a negligible impact on the current backlog. You could have added to this that if they go to the provincial court, which is already where 99% of our cases occur, it would even add to the backlog if they were to be proceeded with by way of summary conviction. It seems to me that's another point to the same end.

● (1935)

**Mr. Shimon Koffler Fogel:** I'll accept that, but with your permission I'd like to go back to a couple of the points you raised earlier. We have to be careful in the context of this discussion not to conflate hate crimes—major, minor, anti-Semitic or other racist graffiti, and so on—with these particular categories of crimes.

They present challenges. One of the suggestions apropos an earlier exchange that you had is that we waive or consider waiving AG sign-off on charges, and that might change the dynamic with law enforcement at the local level in terms of their discretion. Currently, the concern they express—not infrequently—is that the hoops they have to jump through in order to successfully get a charge laid are not worth the investment of effort on their part.

There may be other remedies for lesser offences than promotion of genocide and terrorism. I take your point about how it could actually exacerbate the challenge, given the provincial role.

For us, though, I'd be reluctant to use the phrase "unintended consequences". That's more germane to the earlier presentation. I think it just fell through the cracks. I think that it is not frequent. It's not square on the radar in terms of the experience of the judicial system to deal with. In the desire to tailor something to address the challenges of speed and efficiency, this simply was caught up in the net.

By flagging it for you, we're asking that you give consideration to excluding it. It's not going to have a material impact on the intent of the legislation, and there is, as Leo Adler mentioned earlier, some weight to what it could represent in terms of signals to society.

**The Chair:** You are out of time, Mr. Rankin.

Mr. Fraser.

**Mr. Colin Fraser:** Thank you, Mr. Chair.

Thank you all very much for being here. I appreciate it.

My question was actually going to be to Mr. Adler, but perhaps I'll expand it to Mr. Herman and Mr. Fogel. Thanks for your presentations.

With regard to the offences that you're talking about related to terrorism or advocating genocide or any of the others that you've touched on, has any examination been done of the sentencing? I take the point that instances where these will actually be prosecuted are relatively rare, but has there been an examination of sentencing decisions for these types of offences and whether or not any of them have ever attracted less than two years as a punishment?

**Mr. Shimon Koffler Fogel:** Speaking for us, we've not done that examination. I don't want to exaggerate the number of cases that there are to examine. You're talking about a very high threshold that has to be met even to contemplate charges in these cases. There's a pedagogical value as much as there is a judicial one in terms of how we approach them as a society and what we're saying about what such offences represent or how they offend the core values of our society.

**Mr. Colin Fraser:** Mr. Herman, are you aware of any sort of review of what these types of offences will generally attract and whether any of them have ever been meted out less than two years?

● (1940)

**Mr. Brian Herman:** Our organization is not aware of any analysis like that, Mr. Fraser, but I go back to the basic point that we're making. That is to say, if you leave these sorts of offences as indictable, it is quite clear to those who are considering acting in this way—and to the public who would be affected—the serious nature of these particular provisions.

If you hybridize them and leave the sentencing issue aside, you are also sending a signal that there could be some flexibility in how the justice is administered. That would give people the impression that you are less serious. Both the policy issue aspect of the seriousness and the symbolic nature of the seriousness are affected here.

**Mr. Colin Fraser:** I guess the reason I raised it is that it would be interesting to see, from your point of view, whether those types of sentences have ever been given. It would be awfully hard to say they should be hybridized if there's never any situation where it could attract a sentence of two years less a day or less. That's why I raised it.

**The Chair:** Thank you.

We have three minutes left, so I'll just jump in here.

First of all, I want to thank all of you for your advocacy work—the wonderful work done by Barbra Schlifer in Toronto, the incredible work done by CIJA and B'nai Brith, and of course the wonderful work done by our prosecutors.

I want to come back to the issue that was raised by Mr. Rankin. My sentiment, and I'm saying this in a bit of a different way than Mr. Fogel did, is that I believe there was an attempt to homogenize everything. They took all the offences that were in a certain category and didn't carve anything out. While I don't agree that what the sentence is deters anybody, because I don't think they look at the Criminal Code and decide it, I understand the very important symbolic nature of the population realizing that terrorism offences and genocide offences are ones that shouldn't be, in any circumstances, two years less a day. I really appreciate the symbolism.

Mr. Fogel and then Mr. Herman, I know that this is a Canadian issue. I want to make that very clear. It is not a Jewish issue; it is a Canadian issue. You're here advocating for Canadians, not just for the Jewish community. But the Jewish community has a history with genocide, and has a recent history with experiences of terrorism. Because of that, because your community has been especially hard hit in these areas, could you talk about the feeling in the community about why those offences are more serious or at least should be judged to be only indictable offences as opposed to summary offences?

**Mr. Shimon Koffler Fogel:** Frankly, I think it's self-evident. These particular crimes, as I noted earlier, are crimes that don't simply impact on the intended initial targets. They flout the very core of Canadian values, and they do so in a way that signals that we are not going to follow through in protecting Canadians from the range of these kinds of existential threats that exist. But it goes one step further than that. If you look at the categories that are in question over here, it's not just the perpetrator of a terrorist act. It's about holding accountable those who are going to foment that kind of ideology, those who are going to take the vulnerable and twist their minds in ways that will have them go and act in a particular way.

Really what we're saying, what we're collectively saying, is that the message is going out that if you are somebody who's promoting something that is antithetical to everything we stand for, you are going to be held to account, and held to account in a meaningful way rather than in some administrative way.

For us, I think that's what resonates most powerfully and what I hope is shared by members of the committee.

**The Chair:** Thank you. That's very powerful.

I have one short question for you, Ms. Hendel, before my time runs out. You didn't get into peremptory challenges. What is your feeling as a prosecutor about the value of peremptory challenges? Would you agree with getting rid of them, or do you think they're valuable and should be retained?

**Ms. Ursula Hendel:** There isn't unanimity in the membership on this issue. I think it's a tricky one.

To the extent that there's research out there, I think it does support the concern that peremptory challenges are often used in a discriminatory way. I think there's reason to be concerned. When I think about when I've used my peremptory challenges, it's very difficult for me to articulate why it was I felt uncomfortable with a person. He glowered, maybe...? How would you explain that?

You know, it's really a tricky issue. I think there are folks on both sides, prosecutor and defence counsel, who feel it's valuable, but I don't know that any of us are really able to articulate why.

● (1945)

**The Chair:** Fair enough.

To the members of the panel, thank you. You were all incredibly helpful. We really appreciate it.

Thank you, colleagues.

The meeting is adjourned.

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